

Understanding Canada's Modern Slavery Legislation

Agricultural Manufacturers of Canada – March 26, 2024

Agenda

- Global Context
 - *ESG – Climate Related Risk Disclosure*
 - *Modern Slavery Legislation*
- The Modern Slavery Act and its Requirements
- Key Takeaways for Organizations
- Questions and Discussion

Land Acknowledgement

MLT Aikins acknowledges that our offices are located on the territories of Indigenous peoples who have occupied these lands since time immemorial, including the First Nations of Treaty 1 (Winnipeg), Treaty 4 (Regina), Treaty 6 (Edmonton and Saskatoon), Treaty 7 (Calgary), the Coast Salish peoples (Vancouver), as well as other non-Treaty First Nations and Metis. We acknowledge that we benefit from the lands. We are dedicated to ensuring that the spirit of reconciliation is honoured and respected.

Global Context

ESG – Climate Related Risk Disclosure



What is ESG?

Stands for
**“Environment, Social
and (Corporate)
Governance”**

The use of
non-financial criteria
to assess an organization’s
**environmental, social
and governance** risks,
opportunities and
performance.

ESG Topics



ENVIRONMENT

How nature is impacted

- Climate change
- Air / water pollution
- Biodiversity and land management
- Water use and protection
- Waste management
- Energy use and efficiency



SOCIAL

How people and communities are affected

- Indigenous rights & community relations
- Labour & employment standards, health and safety, diversity & inclusion, employee engagement
- Customer satisfaction, data protection and privacy
- **Human rights**
- Ethical supply chain



GOVERNANCE

How well your company is managed

- **Responsible supply chain management**
- Board composition, executive compensation
- Anti-bribery / anti-corruption / whistleblower policies
- Risk management, audit, and assurance
- Lobbying / political contributions

International developments/trends in ESG – Establishing Sustainability Standards Boards

- April 2015
 - G20 Finance Ministers and Central Bank Governors requested the Financial Stability Board (FSB) to convene public and private sector organizations to review how the financial sector can take account of climate-related risks
- 2015 – The Task Force on Climate-Related Financial Disclosures (“TCFD”) established to develop recommendations for more effective climate-related disclosure.
- 2017 - The TCFD released its final recommendation, which consists of four core elements:
 - Governance - board oversight and management’s role
 - Strategy - describing risks and opportunities over short, medium and long term
 - Risk management - processes for identifying and managing risks
 - Metrics and targets – disclosure of Scope 1, 2 and possible 3 GHG emissions and targets

International developments/trends in ESG – Establishing Sustainability Standards Boards

- October 2021 – Canadian Securities Administration (“CSA”) issued proposed National Instrument 51-107 - Disclosure of Climate Related Matters
 - *Applies to most reporting issuers*
 - *1 year phase in for non-venture issuers*
 - *3-year phase in for venture issuers*
 - *Opt out and explain different from TCFD*
- November 2021
 - International Sustainability Standards Board (ISSB) is established
 - ISSB is a sister board to the International Accounting Standards Board (IASB)
- August 2022
 - *ISSB assumed responsibility for the SASB Standards.*
 - *SASB standards - 77 industries grouped into 11 categories*
 - *E.g., food & beverage is one of 11 categories*
 - *Broken down further into 8 industries*

International developments/trends in ESG – Establishing Sustainability Standards Boards

- June 2023
 - *ISSB released its first two inaugural standards*
 - *IFRS S1 General requirements for disclosure of sustainability-related financial information*
 - *IFRS S2 Climate-related disclosure*
- Both IFRS S1 and S2 follow the same structure as TCFD, requiring corporate disclosures under the categories of:
 - *Governance*
 - *Strategy*
 - *Risk management*
 - *Metrics & target*
- July 2023 – CSA issued statement on release of S1 and S2
 - A further market update from the CSA will follow in the coming months.

Canada has set up its own Sustainability Standards Board (CSSB)

May 2021 - Independent Review Committee on Standards Setting in Canada (IRCSS) was established

2021- 2022 - Consultation done by IRCSS

March 1, 2023 – Final Report – Independent Review Committee on Standards Setting in Canada

New model set out in Final Report

- *Establishes the CSSB*
- *First members appointed April 1, 2023*
- *CSSB currently has 12 members including a Chair*

Principles underlying the Canadian review

- *The public interest*
- *Diversity, equity and inclusion*
- *Indigenous rights*

There is “logic in the CSSB initially establishing Canadian sustainability reporting standards that are in step with the ISSB’s emerging global framework.”

DE&I and Indigenous representation were seen as especially important for sustainability standard setting given the broad scope of sustainability issues and their (often) disproportionate impacts on historically underrepresented groups, including Indigenous Peoples.

Where is Canada headed on Climate Related Disclosure?

- Watch what other countries do vis-à-vis ISSB standards
 - *U.K. – Exceptions for smaller companies on certain items*
 - *USA – SEC – Final Rule issued March 6, 2024. Mandating material climate risk disclosure by public companies. Report on Scope 1 and 2 emissions.*
- CSSB
 - *CSSB released proposed Canadian sustainability disclosure standards March 13, 2024*
 - *Open for comment until June 10 2024*
- CSA
 - *To what degree will CSA mirror CSSB?*

OTHER CANADIAN ESG REQUIREMENTS

- Raising Capital – disclosure on environmental risks
- Larger publicly traded corporations
 - Disclose environmental and social policies fundamental to operations and steps to implement them
 - Disclose whether Board term limits adopted (certain provinces)
 - Disclosure on women on Boards and in executive officer positions (certain provinces)
- CBCA
 - Section 122(1.1) – “Best interest of the corporation” – codified to include consideration of the environment
 - 2020 change – Disclosure relating to diversity at the board and management levels (Section 172.1)
 - Four designated groups (women, visible minorities, Indigenous peoples, persons with disabilities)
- Competition Act
 - False or misleading representations (s. 51(1))
 - November 2023 – proposed amendment to section 74.01 regarding promoting environmental benefits or mitigating effects of a product without adequate and proper testing
 - Proof lies with person making the representation
 - Dangers of making net zero representations
- Financial Institutions
 - 2023 - federally regulated banks and insurers to account for climate change in their governance practices and financial disclosures.
 - Disclose Scope 1 and 2 greenhouse gas (GHG) emissions - later Scope 3 GHG emissions
 - Disclose reporting standards they used to measure GHG emissions

15 Shareholders

50 Shareholders

Prospectus

Venture Issuer

Non-Venture Issuer
-AIF
-Director Term Limits
-Disclosure on Women on Boards

Listed on Exchange

Private Issuer

Reporting Issuer
(Continuous Disclosure)

CBCA Corporations Diversity Disclosure Requirements

MD & A

CSA Proposed NI 51-107

Other Interested Parties:
Financial institutions
Customers
Suppliers/Producers
Competitors

Modern Slavery Legislation

The Many Forms of Modern Slavery

Modern slavery is an umbrella term for involuntary work that often involves human trafficking, bonded or debt labour, child marriage, imprisonment, and other illegal actions.

According to the International Labour Organization, Child and Forced Labour are defined as follows:

Child Labour

Work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development

Forced Labour

Work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily

Global Supply Chain Due Diligence Regulations

Across the world, supply chain due diligence regulations are being proposed or enacted to force large companies and organizations to address issues in their full supply chains.

Country	Statute	Adopted	Proposed/Under Debate	Non-legally Binding
Canada	Fighting Against Forced Labour and Child Labour in Supply Chains Act	✓		
Australia	Modern Slavery Act 2018 New South Wales Modern Slavery Act	✓		
U.S.	Uyghur Forced Labor Prevention Act	✓		
U.K.	Modern Slavery Act (2015)	✓		
Norway	Transparency Act	✓		
Netherlands	Child Labour Law Responsible Business Conduct Act	✓	TBD	

Country	Statute	Adopted	Proposed/ Under Debate	Non-legally Binding
European Union	Corporate Sustainability Due Diligence Directive		TBD	
France	Duty of Care Law	✓		
Germany	Supply Chain Act	✓		
Belgium	Human Rights Due Diligence Law		TBD	
Austria	Motion for a Supply Chain Act		TBD	
Switzerland	Conflict Minerals and Forced Labour Act	✓		
Japan	Guidelines on Respecting Human Rights in Responsible Supply Chains			2022

Eradication of Modern Slavery not Mandatory....yet

- Regulations are making it harder for companies to import goods made through modern slavery from certain regions.
- By conducting due diligence processes, companies are better able to identify the risk and make decisions that can limit their purchase of products made through modern slavery.
- Modern slavery statements and mandatory reporting does not mean that supply chains are 100% free from modern slavery.



The Modern Slavery Act

Fighting Against Forced Labour and Child Labour in Supply Chains Act (“Modern Slavery Act”)

- In Canada, the Modern Slavery Act came **into force on January 1, 2024**, and the first **report is due May 31, 2024** (possibly earlier for CBCA and federally incorporated companies)
- Guidance issued by Public Safety Canada in **December 2023**
- **Statute requires annual reporting** by certain government organizations, public and large private companies on due diligence activities related to the prevention of forced and child labour in supply chains.
- The Modern Slavery Act aims to “increase industry awareness and transparency and drive businesses to improve practices.”
- The Act gives broad power to the Minister or their designates around **compliance and enforcement including significant fines**.
 - *Transparency and accountability are more of a sanction*
 - *Name and shame approach*
- The Act is currently being implemented by [Public Safety Canada](#).
- A summary of the information received through the reports will be tabled in an annual report to Parliament by the Minister of Public Safety.

Applicability: Who is subject to the Act?

Two Tests

1. Is your organization an “entity” or “government institution”?
 - “government institution”
 - Federal agencies
 - Different sections of statute apply
 - Municipalities/provincial institutions/Crown Corps may qualify as an “entity”
2. Do your organization’s activities or activities by entities controlled by the organization trigger reporting obligations?

What is an “Entity”

The Modern Slavery Act defines an **entity** as a corporation or a trust, partnership or other unincorporated organization that either:

- 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, and meets at least two of the following conditions for at least one of its two most recent financial years:
 - i. it has at least \$20 million in assets,*
 - ii. it has generated at least \$40 million in revenue, and*
 - iii. it employs an average of at least 250 employees; or*
- c. is prescribed by regulations

Additional “Entity” Test Considerations

1. Various types of organizations potentially caught that may not be obvious at first
 - a) *Indigenous*
 - i. *Many Indigenous groups own operating companies*
 - b) *Crown Corporations*
 - c) *Investment Funds (Control issue)*
 - d) *Corporations controlled by municipalities*
 - e) *Non-profit organizations*
2. Threshold refer to total global assets, revenue and employees, and is not restricted to assets/revenue/employees located in Canada
3. Being listed on Canadian Stock Exchange in Canada is enough to be an “entity” even if no assets in Canada
 - a) *Companies with head quarters in Israel listed on Canadian stock exchange but no assets in Canada*
 - b) *Query – whether over the counter market will be caught eventually*

Additional “Entity” Test Considerations

4. Doing “Business”

- *“Place of Business in Canada”*
- *“Does Business in Canada”*
- *“Has assets in Canada”*

5. “Assets”

- *May include intangibles*
- *Gross assets (not net)*
Use consolidated financial statements

What Activities are Caught?

- Activities caught under Section 9 are:
 - *Producing goods in Canada or elsewhere: includes the manufacturing, growing, extracting and processing of goods*
 - *Selling and Distributing goods in Canada or elsewhere*
 - *Importing into Canada goods produced outside Canada*
 - *Controlling an entity engaged in these activities*
- Some terms not defined in statute:
 - “selling”
 - “distributing”
 - “importing”
- “Importing”
 - *Guidance says an entity is considered to be importing goods into Canada if the entity is responsible for accounting for those goods under the Customs Act. Purchasing goods produced outside Canada from a third party, where that third party is considered to be the importer for the purposes of the Customs Act, does not count as importing goods.*
- Section 132 of the Customs Tariff now explicitly prohibits the importation of goods associated with forced labour and (soon) child labour

What does the Modern Slavery Act Require?

Annual Supply Chain Risk Report - Overview

- All **reports must reference the activities undertaken during the previous financial year.**
For example, if an entity's financial year follows the calendar year, then a report due on May 31, 2024, would cover the activities from January 1, 2023, and December 31, 2023.
- Companies must complete the following activities:
 - *Develop a report that meets all of the requirements of the Act. Entities are expected to consult internally and gather the information needed to complete their report.*
 - *Once a report is complete, the **report must receive approval** from the appropriate governing body or bodies who have the legal authority to bind the entity or entities.*
 - *Once the report is attested, entities must **complete the online questionnaire** consistent with the information provided in their report.*

Annual Supply Chain Risk Report - Overview

- *At the end of the questionnaire, entities must **upload their attested report in PDF** format before they select “submit.”*
- *Entities must **publish their submitted report** on a prominent place on their website. A copy of the report uploaded through the questionnaire will also be made publicly available by Public Safety Canada in a searchable online [catalogue](#).*

Annual Report Requirements

Report requirements: A report must meet all of the following requirements to fully comply with the Act:

- *Includes information **addressing each of the legal requirements** in subsections 11(1) and 11(3) of the Act.*
- *The **questionnaire may be used as a report template** or guide for developing reports. The questionnaire is designed to collect information necessary to satisfy the requirements under of the Act. More information and supplementary content (e.g. charts, graphs) may be included in the entity's uploaded report at their discretion.*
- *Has received the required **approvals** and includes the **signed attestation**.*
- *It is recommended that the report not exceed **10 pages in length**, or 20 pages for reports provided in both Canadian official languages.*
- *Entities must complete the questionnaire and submit their report in one of the two Canadian official languages. It is **recommended, however, that reports be submitted in both English and French**, in order to make reports accessible to the broader Canadian public. Requests for translated copies of reports may be directed to the responsible entity.*
- *Is a PDF file that does not exceed **100MB in size**.*

Mandatory Information

Mandatory information for Report (S. 11(1) and (3)):

- *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*
- *Its structure, activities and supply chains*
- *Its policies and due diligence processes in relation to forced labour and child labour*
- *The parts of its 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*

Mandatory Information

Mandatory information for Report (S. 11(1) and (3)):

- *Any measures taken to remediate any forced labour or child labour*
- *Any measures taken to remediate the loss of income to the most vulnerable families that results from any measure taken to eliminate the use of forced labour or child labour in its activities and supply chains*
- *The training provided to employees on forced labour and child labour*
- *How the entity assesses its effectiveness in ensuring that forced labour and child labour are not being used in its business and supply chains*

Marketing Aspects of Report

- UN Guiding Principles on Business and Human Rights
- Principle 15: In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:
 - A policy commitment to meet their responsibility to respect human rights;
 - A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
 - Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.
- Continuous improvement
- Risk based approach
- Revise ESG policies in general?

Offences

- Inspections by Minister (s. 15)
 - *Minister can order corrective action (s. 18)*
- Offences under the Act include:
 - *failing to comply with reporting requirements (s. 19(1) and 11(1))*
 - *failing to comply with the disclosure, approval and attestation requirements (s. 19(1) and 11(3), (4), (5) and (6))*
 - *failing to publish report prominently on website or making it available to the public (s. 13 and 19(1))*
 - *failing to provide assistance to public officials (s. 15(4) and 19(1))*
 - *knowingly making false or misleading statements or knowingly providing false or misleading information to the Minister (s. 19(2))*
 - *non-compliance with an order made by the Minister (s. 19(1))*
 - *obstruction (s. 17)*
- Fine of up to \$250,000 (s. 19)
- Liability for directors and officers (s. 20)
 - *Scope of due diligence defence unclear (s. 21)*

Global Best Practices

Supply Chain Due Diligence Best Practice Guidance

- [United Nations \(UN\) Guiding Principles on Business and Human Rights](#)
 - *set of guidelines for States and companies to prevent, address and remedy human rights abuses committed in business operations*
- [Responsible Labour Initiative](#)
 - *is a multi-industry, multi-stakeholder initiative focused on ensuring that the rights of workers vulnerable to forced labor in global supply chains are consistently respected and promoted*
- [Organization for Economic Co-operation and Development \(OECD\) Responsible Business Conduct](#)
 - *standards and recommendations to shape government policies and help businesses minimize the adverse impacts of their operations and supply chains, while providing a venue for the resolution of alleged corporate, social, environmental, labour or human rights abuses*
- [International Labour Organization](#)
 - *Canada is party to eight ILO conventions*
 - *Conventions passed in 1930, 1957 and 1999 relating to forced and child labour*

Key Takeaways for Organizations

Important Considerations

- **Conduct certain activities on a legally privileged basis** for high-risk industries / suppliers / jurisdictions
- **Approach all activities from a broader perspective**
 - Incorporate / build on anti-corruption bribery program / processes
 - Be flexible in approach to allow for incorporation of incremental mandatory supply chain and ESG requirements that will become legal requirements over next few years
- **Reporting timeframes**
 - Guidance recognizes that some actions may span multiple years or lack a concrete start and end point
 - Goals and steps for the future can be mentioned in the report
- **Focus on transparency**
 - No sectors or industries assumed to be entirely free of forced labour and child labour risks.
 - Intent to encourage transparency, not to penalize entities for having identified risks in their activities and supply chains

Recommended Approach for First Report - Informing Board and direction from Board

- *Initial completion of online questionnaire*
- *Gather copies of policies, organizational chart, contracts with suppliers and process with suppliers*
- *Prepare Initial draft of report using responses to online questionnaire as the starting point*
- *Informing Board of requirements and process; give board draft responses to online questionnaire and draft report assuming no changes to existing processes and policies*
- *Get direction from Board on what changes to make to existing governance policies prior to filing Canadian report*
- *Revise questionnaire and report as directed by Board*
- *Revise or draft new policies as directed by Board*
- *Provide revised report and revised answers to questionnaire to Board along with revised/new policies*
- *Approval of report and answers to questionnaire and any changes to policies by Board*
- *Report is signed by proper officer*
- *Complete online questionnaire and file signed report*
- *Publish report on website*

Suppliers

- Management to provide recommendations to Board on what if any changes to arrangements with suppliers
 - *Code of conduct*
 - *Questionnaire*
 - *Audits*
 - *Changes to contracts*
- Determine timelines and process for changes to process with suppliers
 - *Investigate options – could take several months*
 - *Recommendations to board*
 - *Implement board decisions – may take several years*
 - *Communication with suppliers and amending contracts as they renew*

Other Considerations

Training

- *Internal training*
- *Training for suppliers*

Self-Assessment

- *Informal (online questionnaire)*
- *Formal third-party assessment of operations*

Q&A

Learn more about ESG services at
mltaikins.com/services/ESG

View the [New Modern Slavery Legislation handout](#):



Thank you!



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