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Dutch Child Labor Due Diligence Act Approved by Senate – Implications for Global Companies

The Dutch Senate has approved the Child Labor Due Diligence Act, which had been pending for more than two years. This soon-to-be addition to the growing global body of corporate human rights legislation is intended to address child labor in supply chains. The Act will require supply chain due diligence and reporting by a significant number of foreign-based multinationals providing goods or services in the Netherlands. In this Alert, we provide a detailed overview of the Act and suggested near-term action items for multinationals. An unofficial translation of the published version of the Act commissioned by Ropes & Gray also is included as an Appendix to this Alert.

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The Legislative Process

In the Netherlands, new legislation generally is initiated by the government. However, in rare instances, Parliament exercises its right to put forward its own legislative proposal. This is how the Act was introduced into the Dutch parliamentary system.

The Act was approved by the Parliament on February 7, 2017, but with severe criticism that it interfered with the standing policy of the Dutch government to promote the OECD Guidelines for Multinational Enterprises and the UN Sustainable Development Goals through voluntary sector-specific covenants or “IMVOs.” IMVOs are essentially agreements between companies in a sector and the government regarding a particular corporate social responsibility topic, providing a means of self-regulation instead of government regulation. Typically, if an IMVO is concluded on a topic, the Dutch government only will introduce additional regulation if an evaluation of the IMVO indicates that it is not effective.

There are IMVOs in place that, among other things, cover child labor and that are in the process of being evaluated. In recognition of the concerns of opposing members of Parliament and the Dutch government, Attje Kuiken, the member of Parliament who drafted the Act and initiated the legislative proposal, requested suspension of the parliamentary process in the Senate until after these evaluations were completed. However, the evaluations have taken longer than expected and are still not complete.

The Dutch Senate elected not to wait for the IMVO evaluations and approved the Act on May 14, by a slim three-vote margin. The next step is for the Act to be published in the State Gazette, after which it will be submitted to the King for approval. After approval by the King, the Act will be submitted to the designated regulator, which is expected to be Consumer and Market Authority or an entirely new government agency, for implementation.

Effective Date

By its terms, the Act will enter into force on a date to be determined by Royal Decree, but not prior to January 1, 2020. However, the initiating Parliament members indicated in their last meeting during April 2019 the expectation that the Act will become effective sometime in 2022. According to Ms. Kuiken, this three-year period would allow the government to prepare a General Administrative Order that appoints the regulator and fleshes out the obligations of companies under the Act in more detail.

Covered Entities

Companies will be subject to the Act if they sell or supply goods or services to Dutch end-users, regardless of where the company is based or registered or its legal form. For purposes of the Act, an end-user is the natural person or legal entity using or consuming the goods or purchasing the service.

The Act does not contain an exemption for particular categories of companies. However, categories of companies may be exempted by General Administrative Order. In legislative debates in both the Senate and the Parliament, there appears to be a consensus that the size of a company will not necessarily determine whether it is exempt. The absence of a general exemption for small and medium-sized enterprises would be inconsistent with analogous legislation in several other countries.

The Act contains a transitional provision, which provides that it will not apply to goods or services to the extent the obligation to supply the goods or services was entered into prior to the publication of the Act. The transitional exemption will sunset not later than five years after the effective date of the Act.

The Act provides that a company that transports goods is not considered a supplier of those goods. Although the Act is silent on the point, the transportation of the goods will presumably be a covered service under the Act.

Child Labor Defined

For purposes of the Act, child labor includes any form of work performed by persons under 18 and that is included among the worst forms of child labor referred to in Article 3 of the Worst Forms of Child Labor Convention, 1999. Under the Convention, this comprises (1) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict; (2) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (3) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and (4) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

If the work takes place in the territory of a state that is party to the Minimum Age Convention, 1973, in addition to the foregoing, child labor will include any form of work prohibited by the laws of that state in implementation of the Convention. If the work takes place in the territory of a state that is not a party to the Minimum Age Convention, child labor will further include (1) any form of work performed by persons who are subject to compulsory schooling or who have not yet reached the age of 15 and (2) any form of work performed by persons under 18 if the work, by virtue of its nature or the conditions under which it is performed, may endanger the health, safety or morality of young persons, except that child labor will not include light work (as defined in the Minimum Age Convention), carried out for a maximum of 14 hours a week by persons who have reached the age of 13. "Light work" is defined in the Minimum Age Convention as work by persons 13 to 15 years of age which is (1) not likely to be harmful to their health or development and (2) not such as to prejudice their attendance at school, their participation in vocational orientation or training programs approved by a competent authority or their capacity to benefit from the instruction received.

Exercising Due Diligence

In contrast to corporate modern slavery legislation in many other jurisdictions, the Act imposes an affirmative due diligence obligation. Subject companies must investigate whether there is a reasonable suspicion that the goods or services to be supplied to Dutch end-users have been produced using child labor. Due diligence is to be based on sources that are reasonably known and accessible to the subject company. Due diligence also can be satisfied by obtaining goods

or services from companies that have issued declarations that they exercise due diligence (declarations are discussed in more detail below).

If the subject company has a reasonable suspicion of child labor in the production of the goods or services, it must adopt and implement a plan of action. A joint action plan aimed at ensuring that affiliated companies exercise due diligence that is developed by or among one or more social organizations, employees' organizations or employers' organizations and approved by the Minister for Foreign Trade and Development Cooperation will satisfy this requirement.

Further requirements pertaining to due diligence and the plan of action will be specified in a General Administrative Order, which will take into account the ILO-IOE Child Labour Guidance Tool for Business. The Child Labour Guidance Tool was created jointly by the International Labour Organization and the International Organisation of Employers as a resource for companies to meet the due diligence requirements indicated in the UN Guiding Principles on Business and Human Rights, as they pertain to child labor.

Reporting

A company that is subject to the Act generally must prepare a declaration indicating that it exercises due diligence in order to prevent the goods and services that it sells or supplies to Dutch end-users from being produced using child labor.

Companies that already are registered in the trade register will be required to submit the declaration to the designated regulator within six months after the Act takes effect. If a company is not already registered in the trade register, it will be required to submit its declaration immediately after it is registered. A company that is not registered in the European part of the Netherlands and that is not registered in the trade register will be required to submit a declaration within six months after the company supplies goods or services to end-users in the Netherlands for the second time in a given year.

Declarations will be published in an online public register to be established by the designated regulator. The Act indicates that further rules may be established pertaining to the content and form of declarations.

If a company only receives goods or services from other companies that have issued a declaration, it is not required to issue its own declaration. Other exceptions to the reporting requirements of the Act may be established by General Administrative Order.

Enforcement and Penalties for Non-compliance

A regulator will be appointed to oversee compliance with the Act.

Any natural person or legal entity whose interests are affected by the actions or omissions of a subject company relating to compliance with the Act may submit a complaint to the designated regulator. The complaint must contain a concrete indication of non-compliance by an identifiable party.

In the first instance, an aggrieved party must work with the subject company to resolve the complaint. The regulator only may address a complaint after it has been dealt with by the company, or six months after the submission of the complaint to the company without it having been addressed.

A company can be fined up to €2,000 for failing to submit a statement declaring that it exercises due diligence. If a company fails to carry out due diligence in accordance with the Act or to draw up a plan of action, or to comply with any further requirements that are established pertaining to due diligence and the plan of action, a fine of up to 10% of the worldwide annual turnover of the company can be imposed. However, the Act provides that a fine will not be imposed

until after a binding instruction has been issued to the company. A time limit may be set for complying with the instruction.

In addition, the company can incur additional fines and a director may even be imprisoned for up to two years if, in the prior five years, a fine previously had been imposed for violating the same requirement of the Act and the new violation is committed under the order or de facto leadership of the same director.

Next Steps for Multinationals

As noted earlier in this Alert, further rulemaking will be required to address some of the compliance details not covered in the Act. Among other things, additional rulemaking is expected to further flesh out the form and content of declarations and due diligence and plan of action requirements. In addition, the effective date of the Act will be indicated in the Royal Decree.

The Act will require companies to put in place substantive compliance measures to address child labor. In contrast, disclosure-only modern slavery legislation, such as the California Transparency in Supply Chains Act, UK Modern Slavery Act and the federal and New South Wales Modern Slavery Acts in Australia, requires companies to each year publicly disclose what they are doing to address modern slavery, but do not require companies to put in place policies, procedures or substantive compliance programs.

It is premature to establish a compliance program, or enhance an existing compliance program, specifically to comply with the Act, until there is further visibility on some of the Act's requirements. Furthermore, we expect the effective date will be set far enough out to give companies enough time to address the Act's requirements.

However, we recommend that multinationals take the following preparatory steps in contemplation of the Act:

- ✓ Conduct a preliminary applicability assessment. Assess whether group companies are providing goods or services to end-users in the Netherlands and, if so, which companies, the extent of those activities and the nature of the products or services involved.
- ✓ Even if not providing goods or services to end-users in the Netherlands, assess whether products or sub-contracted services are being provided to companies that are likely to be subject to the Act. As is the case with other legislation that requires supply chain due diligence, such as the U.S. Conflict Minerals Rule and the U.S. Federal Acquisition Regulation anti-human trafficking rule, companies that are subject to the Act are likely to put significant pressure on their supply chains, in particular their tier-1 suppliers, to support their compliance requirements.
- ✓ Assign responsibility for monitoring further developments under the Act and for compliance oversight. As we have noted in prior [Alerts](#), multinationals are moving toward more centralized human rights compliance. Increasingly, policies, procedures and disclosures are being developed and coordinated by a centralized, group-wide steering committee comprising of representatives from relevant corporate functions, business units and geographies. This approach is being taken both to increase compliance efficiency and reduce risk.
- ✓ Continue up the learning curve on child labor risks in the supply chains of applicable goods and services. Among other things, consult publicly available resources, such as those published by the U.S. and other governments, NGOs and other comparable companies, as well as trade group resources.
- ✓ Assess the adequacy of existing child labor due diligence procedures and conduct a gap assessment against the ILO-IOE Child Labour Guidance Tool for Business. Part C of the Guidance Tool contains recommended steps for preventing and addressing child labor impacts.

- ✓ Based on all of the foregoing, develop a preliminary, high-level project plan for addressing the requirements of the Act and/or commercial customers that will be subject to the Act. This will provide a framework for developing a more detailed compliance plan and facilitate an efficient approach to compliance when the effective date of the Act has been set and the compliance requirements under the Act have been further fleshed out.

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For further information on the practice, click [here](#).

Please click [here](#) to visit our CSR and Supply Chain Compliance website.

This unofficial translation was commissioned by Ropes & Gray. For the Dutch language text of the Act, see [here](#).

Legislative proposal from member Van Laar on the introduction of a duty of care to prevent the supply of goods and services produced using child labor (Child Labor Due Diligence Act)

AMENDED LEGISLATIVE PROPOSAL

February 7, 2017

We, Willem-Alexander, by the grace of God, King of the Netherlands, Prince of Orange-Nassau, etc. etc. etc. etc.

Greetings to all who shall see or hear this read!

We have taken into consideration the desirability of enshrining in law that companies that sell goods and services on the Dutch market should do everything within their power to prevent their products and services from being produced using child labor, so that consumers can buy them with peace of mind;

Thus it is that We, having heard the recommendations of the Advisory Division of the Council of State, and in consultation with the States General, hereby approve and understand the following:

Article 1 Definitions

For the purposes of this Act and the provisions based thereon, the following terms shall have the following meanings

- a. *child labor*: child labor as referred to in Article 2;
- b. *end-user*: the natural person or legal entity using or consuming the good or purchasing the service;
- c. *company*: a company within the meaning of Article 5 of the Trade Register Act 2007 or any entity engaged in an economic activity, regardless of its legal form and the way in which it is financed;
- d. *superintendent*: the superintendent to be appointed by order in council;
- e. *binding instruction*: a standalone order imposed for an offence;
- f. *standalone order*: the order, issued as a sole order, to perform certain acts, as referred to in Article 5:2, second paragraph, of the General Administrative Law Act, in order to promote compliance with statutory regulations;
- g. *Our Minister*: Our Minister for Foreign Trade and Development Cooperation.

Article 2

1. Child labor is understood to mean:
 - a. in any case, any form of work, whether or not under an employment contract, performed by persons who have not yet reached the age of 18 and which is included among the worst forms of child labor referred to in Article 3 of the Worst Forms of Child Labor Convention, 1999;
 - b. if the work takes place in the territory of a State Party to the Minimum Age Convention, 1973, 'child labor' shall further mean any form of work prohibited by the law of that State in implementation of that Convention;
 - c. if the work takes place in the territory of a State which is not a party to the Minimum Age Convention, 1973, child labor shall further be understood to mean:
 - i. any form of work, whether or not under an employment contract, performed by persons who are subject to compulsory schooling or who have not yet reached the age of 15, and
 - ii. any form of work, whether or not under an employment contract, performed by persons who have not yet reached the age of 18, insofar as such work, by virtue of the nature of the work or the conditions under which it is performed, may endanger the health, safety or morality of young persons.
2. By way of derogation from paragraph 1(c), child labor shall not include light work as defined in Article 7(1) of the Minimum Age Convention, 1973, carried out for a maximum of 14 hours a week by persons who have reached the age of 13.

Article 3 Supervision

1. The superintendent shall be charged with the supervision of compliance with the provisions of or pursuant to this Act.
2. Any natural person or legal entity whose interests are affected by the actions or omissions of a company relating to compliance with the provisions of or pursuant to this Act may submit a complaint about this to the superintendent.
3. Only a concrete indication of non-compliance with the provisions of or pursuant to this Act by an identifiable party constitutes grounds for submitting a complaint.
4. A complaint can only be dealt with by the superintendent after it has been dealt with by the company, or six months after the submission of the complaint to the company without it having been addressed.

Article 4 Declaration

1. Any company registered in the Netherlands that sells or supplies goods or services to Dutch end users declares that it exercises due diligence as referred to in Article 5 in order to prevent such goods or services from being produced using child labor. The first sentence applies *mutatis*

mutandis to companies not registered in the Netherlands that sell or supply goods or services to Dutch end users.

2. The company shall immediately send the statement, as referred to in the first paragraph, to the superintendent after it has been registered in the trade register. Companies that are already registered with the trade register shall send the declaration to the superintendent within six months of the entry into force of this Act. Any company that is not registered in the European part of the Netherlands and that is not registered in the trade register shall send the declaration to the superintendent within six months after the company supplies goods or services to end users in the Netherlands for the second time in a given year.
3. Exceptions may be granted by or pursuant to an order in council before the date on which the declaration is delivered and further rules may be laid down on the content and form of the statement.
4. The supply of goods, as referred to in the first paragraph, does not mean the mere transport of goods.
5. The superintendent shall publish the declarations in a public register on its website.

Article 5 Due diligence

1. A company which, with due observance of the provisions of paragraph 3, investigates whether there is a reasonable suspicion that the goods or services to be supplied have been produced using child labor and which, in the event of a reasonable suspicion, adopts and implements a plan of action, is exercising due diligence. A company which receives goods or services from companies which have issued a declaration as referred to in Article 4 is also exercising due diligence with respect to those goods and services. A company which receives only goods or services from companies which have issued a declaration as referred to in Article 4 is also exercising due diligence and shall not be required to issue a declaration as referred to in Article 4.
2. The investigation referred to in the first paragraph shall be oriented toward sources that are reasonably known and accessible to the company.
3. With due observance of the ILO-IOE Child Labor Guidance Tool for Business, further requirements shall be set by or pursuant to an order in council for the investigation and the plan of action referred to in the first paragraph.
4. Our Minister may approve a joint plan of action that is aimed at ensuring that affiliated companies exercise due diligence to prevent goods or services from being produced using child labor, and that is developed by or among one or more social organizations, employees' organizations or employers' organizations. A company that acts in accordance with a joint action plan approved by Our Minister is exercising due care.

Article 6 Exemption

By or pursuant to an order in council, categories of companies are exempted from the provisions of this Act. The recommendation for an order in council to be adopted pursuant to the previous sentence shall not be made until four weeks after the draft has been submitted to both Houses of the States-General.

Article 7 Administrative fine

1. The superintendent may impose an administrative fine for violation of Article 4, second paragraph, up to a maximum of the amount of the second category fine of Article 23, fourth paragraph, of the Dutch Criminal Code.
2. The superintendent may impose an administrative fine of up to the amount of the fine of the sixth category of Article 23, fourth paragraph, of the Dutch Criminal Code in respect of the following:
 - a. failure to comply with the obligation to carry out investigations or to draw up a plan of action, as referred to in Article 5, first paragraph,
 - or
 - b. failure to comply with the requirements for the examination or plan of action referred to in Article 5, third paragraph.
3. Article 23, seventh paragraph of the Dutch Criminal Code shall apply *mutatis mutandis* to paragraphs 1 and 2 of this Article.
4. The superintendent shall not impose an administrative fine for violation of the provisions of or pursuant to Articles 4 and 5 until after they have issued a binding instruction. The superintendent may set the offender a time limit within which the instruction must be complied with.

Article 8 Suspension of the fine

The effect of a decision imposing an administrative fine shall be suspended until such time as the period for submitting a notice of objection or appeal has expired or, if an objection has been lodged or an appeal has been lodged, a decision has been taken on the objection or appeal, as the case may be.

Article 9 Criminalization

In Article 1, under 2°, of the Economic Offences Act, the following shall be inserted in the alphabetical list:

the Child Labor Due Diligence Act, article 4, second paragraph, and Article 5, first and third paragraphs, if, in the five years preceding the violation, an administrative fine was imposed on the basis of Article 7, first or second paragraph, of that Act for the same violation by the company, committed by order of or under the *de facto* leadership of the same manager.

Article 10 Evaluation

Within five years of the entry into force of this Act, Our Minister shall send the States-General a report on the effectiveness and practical effects of this Act.

Article 11 Transitional provision

This Act shall be inapplicable to the supply of goods or services, the obligation for which was entered into prior to the date of issue of the Bulletin of Acts and Decrees in which it is published, until the date on which the obligation expires pursuant to a stipulation agreed prior to the date of issue of the Bulletin of Acts and Decrees in which this Act is published, but no later than until five years after the date of entry into force of this Act.

Article 12 Entry into force

1. This Act shall enter into force on a date to be determined by Royal Decree, but not earlier than January 1, 2020.
2. This Act shall expire at a time to be determined by Royal Decree, which shall not be before the time of dispatch of the report referred to in Article 10.

Article 13 Short title

This law shall be cited as: Child Labor Due Diligence Act.

Order and command that it be published in the Bulletin of Acts, Orders and Decrees and that all ministries, authorities, colleges and civil servants concerned shall uphold its accurate execution.

Given

The Minister for Foreign Trade and Development Cooperation