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# New Zealand Moves Toward Proposal of Modern Slavery Legislation that Would Create New Compliance Obligations for U.S.-based and Other Multinationals

On April 8, the New Zealand government commenced a consultation on legislation addressing slavery and worker exploitation. As proposed, the legislation would create due diligence and disclosure obligations for a large number of companies operating in New Zealand, including many U.S.-based multinationals, with additional responsibilities for larger organizations. The Ministry of Business, Innovation and Employment in New Zealand is currently soliciting feedback on the proposal. This Alert provides an overview of the proposal and how it compares to other corporate modern slavery legislation.

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## The Lead-Up to the Consultation

The International Labour Organization and Walk Free Foundation estimate there are currently over 40 million victims of modern slavery worldwide, including those who work under hazardous or exploitative working conditions. In 2016, Walk Free estimated that approximately 3,000 persons in New Zealand were in conditions of modern slavery. World Vision also estimates that an average New Zealand household spends approximately NZ\$34 each week on industries whose products are implicated in modern slavery.

With some of New Zealand's key trading partners – the United Kingdom and Australia – introducing modern slavery legislation in recent years, there has been momentum in New Zealand to implement its own law. In March 2021, the New Zealand government committed to a five-year Plan of Action against Forced Labour, People Trafficking and Slavery, a high-level framework aimed at minimizing exploitation both in New Zealand and internationally. As part of the Plan of Action, the government committed to considering legislation to address modern slavery and worker exploitation in supply chains.

## Subject Entities

The proposal encompasses all types of entities, including, among others, companies, partnerships and trusts. As further discussed in this Alert, responsibilities would be graduated. Larger entities would be required to do more to identify and address modern slavery in their supply chains.

An entity would be considered small, medium or large based on its consolidated annual revenue in its most recently completed fiscal year. The thresholds contemplated by the proposal are:

- Small entity – Annual revenue below NZ\$20 million;
- Medium entity – Annual revenue above NZ\$20 million and below NZ\$50 million; and
- Large entity – Annual revenue above NZ\$50 million.

## Due Diligence and Reporting Requirements

Subject entities would be required to identify and/or take action to address (1) modern slavery in their domestic and international operations and supply chains and (2) worker exploitation in their domestic operations and supply chains. The discussion document relating to the proposal notes that the New Zealand government does not expect entities to apply local New Zealand employment standards regarding worker exploitation to their international operations and

supply chains. However, since practices to address modern slavery are internationally recognized, requirements applicable to modern slavery would apply globally.

As used in the discussion document, the following terms have the indicated meanings:

- **“Modern slavery”** is severe exploitation that a person cannot leave due to threats, violence, coercion, deception and/or abuse of power, including forced labor, debt bondage, forced marriage, slavery and slavery-like practices and human trafficking.
- **“Exploitation”** is any behavior that causes, or increases the risk of, material harm to the economic, social, physical or emotional well-being of a person. **“Worker exploitation”** includes non-minor breaches of employment standards in New Zealand.
- **“Operations”** are construed broadly to include all activities undertaken by an entity in furtherance of its business objectives and strategies, including all material relationships an entity has that are linked to its activities, including, for example, investment and lending activity, material shareholdings and direct and indirect contractual relationships (such as subcontracting and franchising relationships).
- **“Supply chains”** are the network of organizations that work together to transform raw materials into finished goods and services for consumers. They include all activities, organizations, technology, information, resources and services involved in developing, providing or commercializing a good or service into the final product for end consumers.

As proposed, applicable responsibilities would apply across the entire supply chain of an entity and not be limited to any set number of tiers. However, the commentary in the discussion document notes that, while broad in scope, in practice any activity would be subject to reasonableness and proportionality considerations, which would take into account a wide range of factors such as the entity’s size and resources, the nature of the control or influence the entity has over a supplier, good practice in the entity’s sector, sector-specific risks and the degree and type of harm that could result if no action is taken.

***Responsibility 1 – Mitigation of Known Adverse Impacts; Applicable to All Subject Entities***

The proposal would require all subject entities to take reasonable and proportionate action if they become aware of (1) modern slavery in their domestic and international operations and supply chains or (2) worker exploitation in their domestic operations and supply chains.

Such actions could include, for example, reporting the case to the appropriate authority, working with suppliers to address the harm, changing suppliers or taking steps to mitigate any risks identified.

***Responsibility 2 – Due Diligence by Small and Medium Entities***

Small and medium entities would be required to undertake due diligence to prevent, mitigate and remedy modern slavery and worker exploitation by New Zealand entities where the small or medium entity is (1) the parent or holding company or (2) otherwise has significant contractual control, direct or indirect, over another New Zealand entity’s affairs. A “New Zealand entity” would include any entity operating in New Zealand, including any entity that is an employer required to comply with New Zealand minimum employment standards.

If a small or medium entity satisfies one of the requirements above, it would be required to:

- Identify and assess the risk of modern slavery and worker exploitation by entities in its operations and supply chains that it has significant control or influence over;
- Consider measures it could implement to address and manage any identified risk of modern slavery and worker exploitation, and assess whether the measures are reasonable under the circumstances and proportionate to the risk;
- Implement measures that are reasonable under the circumstances and proportionate to the risk; and
- Implement systems to evaluate the measures taken.

Taken together, responsibilities 1 and 2 would require small and medium entities to undertake due diligence to proactively investigate whether there is modern slavery or worker exploitation in their operations and supply chains only if they have significant control or influence over another New Zealand entity.

Responsibility 4 below discusses due diligence by large entities.

### ***Responsibility 3 – Reporting; Applicable to Medium and Large Entities***

Medium and large entities would be required to disclose the steps they are taking to address (1) modern slavery in their domestic and international operations and supply chains and (2) worker exploitation in their domestic operations and supply chains.

A “prescribed disclosure” approach is proposed, meaning that entities would be required to disclose information on specified issues. The discussion document notes that available evidence suggests this approach will be more effective than a general, principles-based disclosure approach.

The discussion document further notes that the government considers the disclosure requirements under the Australian Commonwealth Modern Slavery Act to be broadly consistent with the UN Guiding Principles on Business and Human Rights and to provide a useful reference for what mandatory disclosures could apply in New Zealand. It also was noted that aligning New Zealand’s annual disclosure requirements with Australia’s could help to reduce duplication in the disclosures required by entities subject to both sets of legislation. The requirements of the Australian Commonwealth Modern Slavery Act are discussed in our earlier Alert [here](#).

### ***Responsibility 4 – Due Diligence by Large Entities***

Large entities would be required to undertake due diligence to prevent, mitigate and remedy (1) modern slavery in their domestic and international operations and supply chains and (2) worker exploitation in their domestic operations and supply chains.

This responsibility would be aligned with the responsibility of small and medium entities to undertake due diligence to prevent, mitigate and remedy modern slavery and worker exploitation by New Zealand entities they have significant control over (as earlier discussed). However, for large entities, the scope would be significantly broader. The responsibility would apply in respect of modern slavery to the international operations and supply chains of the large entity. In addition, domestically, the responsibility would apply across the large entity’s entire operations and supply chain. It would not be limited to other entities the large entity has significant control or influence over (as would be the case for small and medium entities).

The specific due diligence steps required to be taken by a large entity, whether domestically or internationally, would be influenced by its risk assessments and consideration of measures to address identified risks in a reasonable and proportionate manner.

### Penalties

The proposal notes that penalties could apply for failing to take appropriate and/or adequate action mandated by the four responsibilities. While amounts are not specified in the proposal, the proposal notes there are existing regulatory regimes in New Zealand that could inform development of a penalty framework. Each of New Zealand's Anti-Money Laundering and Countering Financing of Terrorism Act of 2009, Financial Markets Conduct Act of 2013 and Health and Safety at Work Act of 2015 require disclosure and/or due diligence to achieve their purposes. Financial penalties for non-compliance under those frameworks can range from NZ\$600,000 to NZ\$5 million.

The proposal does not specifically contemplate criminal penalties, since existing criminal penalties already apply if a person is directly involved in a modern slavery offense.

In the consultation, the Ministry of Business, Innovation and Employment is specifically seeking feedback through the consultation process regarding whether large entities should be liable for remediation where they have caused or contributed to harms in their international operations and supply chains. The MBIE is also seeking feedback on whether victims (onshore and offshore) should have the ability to bring claims against organizations.

### Comparing the Proposal to Other CSR Legislation

New Zealand's proposal goes beyond the California Transparency in Supply Chains Act, U.K. Modern Slavery Act and Australian Commonwealth Modern Slavery Act. Each of those Acts only requires subject companies to disclose, among other things, their compliance activities to address modern slavery. They do not require companies to adopt policies or procedures, trace their supply chains, source responsibly or take other remedial action to address modern slavery risks or adverse impacts.

The New Zealand proposal is more closely aligned with mandatory human rights due diligence legislation, which requires affirmative steps to address human rights risks and adverse impacts as well as reporting. Examples of mandatory human rights due diligence legislation include the French Corporate Duty of Vigilance Law, the [German Due Diligence in the Supply Chain Act](#), the [Norwegian Transparency Act](#), the [Swiss Conflict Minerals and Child Labor Due Diligence Provisions](#) and the proposed [European Union Corporate Sustainability Due Diligence Directive](#) (links are to Ropes & Gray alerts on these topics). Specific due diligence requirements differ by jurisdiction, but they are broadly aligned with the due diligence framework contemplated by the United Nations Guiding Principles on Business and Human Rights and the Organisation for Economic Co-operation and Development's Guidelines for Multinational Enterprises.

Modern slavery disclosure and mandatory human rights due diligence legislation in other jurisdictions have compliance thresholds, generally based on turnover and/or number of employees. As proposed, the New Zealand legislation would not have a minimum compliance threshold. Instead, the legislation would apply to all companies with jurisdictional nexus, although, as described, the compliance requirements would differ based on company turnover.

### Consultation Process and Next Steps

The proposal is in the public consultation period. In the consultation, the government asks for feedback on 28 questions. The consultation closes on June 7.

Following the consultation period, a draft bill is expected to be introduced. At present, the content and timing of the draft bill, and, ultimately, final legislation remain to be determined.

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