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The Norwegian Transparency Act Comes Into Force: Mandatory Human Rights Due Diligence for Large Companies Doing Business in Norway (And, in Practice, Many of Their Foreign Suppliers)

On 1 July 2022, the Norwegian Transparency Act entered into force. It requires that large domestic (Norwegian) companies and foreign companies doing business in Norway implement and account for human rights due diligence in their operations, supply chain, and the use and disposal of their products and services. Qualifying companies have until 30 June 2023 to publish their inaugural reports. Even where a company is not directly caught by the Act, qualifying companies are likely to seek to cascade substantive obligations down their supply chain through contractual obligations. This alert identifies the companies that are likely to be affected by the Act, and the practical steps they should take to comply, thereby minimizing legal, commercial, and reputational risk in Norway and globally.

TO WHICH COMPANIES DOES THE ACT APPLY?

The Act applies directly to Norwegian public limited and listed companies. It also applies to other Norwegian companies and foreign companies that pay taxes in Norway, if they meet at least two of the following criteria:

- Annual sales revenue of at least NOK 70 million (approximately USD 7 million);
- A balance sheet total of NOK 35 million (approximately USD 3.5 million); or
- At least 50 full time employees

In practice, the Act will have even broader application. As companies caught by the Act (including oil and gas majors with concessions in Norway) look to demonstrate that they have engaged with business



partners in their supply chain, they are likely to seek assurance from their suppliers, including through contractual obligations, that they adhere to international standards on human rights and forced labor. We are already seeing in the market examples of large Norwegian companies increasing due diligence on their foreign suppliers (whether they have any connection to Norway or not) and seeking to impose on them obligations to put in place global systems and processes to address the risk of forced labor and human rights impacts in their onward supply chain.

WHAT ARE QUALIFYING COMPANIES REQUIRED TO DO?

The Act imposes three, core obligations on qualifying companies:

- 1. Conduct human rights due diligence** in accordance with the OECD Guidelines for Multinational Enterprises (which are consistent with the UN Guiding Principles on Business and Human Rights and the requirements of the proposed EU Due Diligence Directive – see our client alert [here](#)). This is a far-reaching obligation which requires that a qualifying company must: embed the respect for human rights and decent working conditions into its policies; identify, prioritise, and take measures to address (i.e. by implementing suitable measures to cease, prevent or mitigate) adverse impacts in which it is involved; track the implementation and results of these measures; communicate with affected stakeholders; and provide for or co-operate in remediation.
- 2. Account for their due diligence.** This means that companies must report publicly on these activities and make the information available on their website. The deadline for publication of a qualifying company's first report is 30 June 2023.
- 3. Respond to information requests from members of the public** about the risks relating to human rights and decent working conditions in their operations and value chains and how these have been addressed.

HOW IS THE ACT ENFORCED AND WHAT ARE THE SANCTIONS FOR NON-COMPLIANCE?

The Act gives power to the Norwegian Consumer Authority to oversee compliance. In cases of non-compliance, the Act provides for administrative penalties. In cases of repeated infringements of the duty to conduct due diligence, the size of the penalty imposed will reflect the severity, scope, and effects of the infringement.

WHAT SHOULD COMPANIES DO TO COMPLY WITH THE ACT (AND MEET THE DEMANDS OF QUALIFYING BUSINESS PARTNERS)?

Both qualifying companies and companies with direct contractual relationships with qualifying companies should take the following, practical steps to ensure that they comply with the Act (and any obligations that flow down in the supply chain through contractual mechanisms):

- 1. Stress test existing policies and procedures** on human rights and modern slavery to ensure that they meet international standards. If companies do not already have a human rights policy, now is the time to draft and adopt one.
- 2. Identify actual and potential human rights issues.** This involves:
 - a. Mapping and assessing issues in the supply chain.** Start with human rights issues amongst direct or first-tier suppliers. Companies will then need to dig deeper, identifying human rights issues in the second tier and beyond, all the way down to the extraction of raw materials;
 - b. Identifying human rights issues in their operations.** For many companies, these will include labor rights, such as the risk of workplace accidents, discrimination, and infringement of freedom of association. However, companies will also face other human rights issues, varying according to sector and operating context. For example, companies operating in the hydroelectric sector will often face land rights and indigenous peoples' rights issues. Extractive



companies with operations in weak governance or conflict affected areas will face issues associated with security of the person; and

- c. Identifying human rights issues associated with the end use or disposal of a company's products or services. Again, these will vary considerably from sector to sector.
3. **Prioritise salient human rights issues for action.** This should be done by assessing which issues are at risk of the most severe negative impact through the company's activities and business relationships.
4. **Cease, prevent or mitigate** adverse impacts through practical measures, and track the effectiveness of these measures.
5. **Record** policies, systems, and processes (including their salient issues and how these are addressed in practice) in a document suitable for external distribution. For example, if a company audits its suppliers against human rights related criteria, they should track and record: the number of audits carried out in a reporting cycle; the criteria against which suppliers are assessed; key audit findings; and how they engage with suppliers in the event of non-compliance. Maintaining these records will enable a company efficiently to discharge their reporting obligation and to respond to requests from counterparties or members of the public.

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