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# California Transparency in Supply Chains Act of 2010 (SB 657)

On January 1, 2012, the disclosure requirements of the California Transparency in Supply Chains Act of 2010, Senate Bill 657 ("SB 657" or the "Act") take effect. These requirements, discussed below, apply to all retail sellers or manufacturers doing business in the state of California[1] with USD 100 million or more in annual worldwide gross revenues.[2]

**I. Requirements of SB 657**
SB 657 requires retail sellers and manufacturers to disclose their efforts to combat slavery and human trafficking and to eliminate it from their direct supply chains. Specifically, covered retailers and manufacturers must, at a minimum, disclose to what extent, if any, the retailer, seller or manufacturer does each of the following:

1. Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party.

2. Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit.

3. Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.

4. Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.

5. Provides company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.

The exclusive remedy, as provided for under the Act, is injunctive relief in an action brought by the Attorney General. However, there is nothing in the Act that limits remedies, civil or criminal, available for the violation of any other state or federal law. Furthermore, it is possible that nondisclosure may result in private civil claims. Under California's Unfair Competition Law, defendants may be sued for "unlawful" and "unfair" business practices. If non-compliance with SB 657 is viewed as an unlawful or unfair business practice, then civil penalties may be assessed against companies not in compliance.

**II. Federal Legislation**
On August 1, 2011, Congresswoman Carolyn Maloney (D-New York) introduced federal legislation (H.R. 2759) that is based on the California law and would be applicable to transactions involving the foreign commerce of the United States (essentially, any import entry would be affected by the proposed legislation). H.R. 2759 would similarly require companies to disclose in their annual SEC filings what measures they have taken during the calendar year to identify and address concerns of forced labor, slavery, human trafficking and child labor. H.R. 2759 is currently pending before the House Committee on Financial Services, Subcommittee on Capital Markets and Government Sponsored Enterprises.

In addition to the five requirements of SB 657, the proposed federal legislation also requires the disclosure to include information on the extent, if at all, to which the company engages in each following:

1. Maintains a policy to identify and eliminate risks of human trafficking and slavery. The disclosure must include the text or a substantive description of the policy.

2. Maintains a policy prohibiting the use of the company's products, services, etc. to obtain or maintain human trafficking or slavery.

3. Assesses supply chain management and procurement systems of suppliers to verify whether said suppliers have appropriate procedures in place to identify risks of human trafficking or slavery within their own supply chain.

4. Ensures that recruitment practices at all suppliers comply with the company's standards for eliminating human trafficking and slavery.

5. Ensure that remediation is provided to those who have been identified as victims of human trafficking or slavery within the company's supply chain.

These additional requirements appear to be much more onerous than the requirements of SB 657; however, this does not have to be the case. Venable is available to assist in drafting comprehensive compliance and audit protocols that address these additional disclosure requirements.

**III. What Level of Disclosure Is Required?**
The core concern with the Act is even though it only purports to impose disclosure requirements, those disclosure requirements are based on fairly vague and undefined auditing standards and measures. Some companies may not presently undertake such auditing activities as part of their corporate governance protocol, in particular, with respect to overseas vendors, agents, suppliers and third parties – all of which would need to be addressed under the Act. Therefore, in addition to the added disclosure requirements, some companies may want consider to institute new audits, training and other measures as part of their efforts to comply with the Act.

Some stakeholder associations (representing retailers) have requested non-binding guidance from the State Attorney General's Office. Such informal guidance, if issued, would help provide a sense of "best practices" that those affected by the law might consider as part of an overall compliance initiative. However, as of this date, the AG has not issued any such non-binding guidance in response to the requests received.

**IV. Recommended Steps to Ensure Compliance**
The uncertainty surrounding what California will acknowledge as sufficient for compliance purposes has resulted in some companies deciding to address the Act's standards by way of existing supply chain security activities, including regularly-scheduled audits for FCPA and related pro-active compliance measures.

As a starting point, we recommend the following steps:

- Drafting a simple statement regarding the Act's effectiveness of January 2012, underscoring the company's commitment to compliance in general, the need to ensure that all vendors, suppliers and third parties acknowledge this and will cooperate;

- Providing this statement to all supply chain actors, such as air and ocean transport carriers/providers, freight forwarders, Customs brokers, overseas agents, suppliers, vendors, producers, *etc.*;

- Draft a statement covering the five (5) disclosure areas of the Act for placement on the company's website;

- Coordinate compliance measures in conjunction with existing FCPA, CTPAT and other measures; and

- Coordinate with existing audit teams (either internal or external) to ensure that the Act's core disclosure areas are built into planned review of overseas partners.

In sum, while compliance with the new law is simple insofar as all that is technically required is disclosure of what a company is doing to combat slavery in its distribution chain, the type of meaningful compliance necessary to enable a company to certify that it has met, and continues to meet, each of the five requirements noted above may require substantial effort.

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Venable is available to assist with the compliance process to ensure that all disclosure requirements under SB657 are met. Please contact **Thomas D. Washburne, Jr.** at 410.244.7744, **Robert L. Waldman** at 410.244.7499, or **Ashley W. Craig** at 202.344.4351 for further information and assistance.

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1. What constitutes "doing business in the state" was substantially broadened by recent amendments to California Revenue and Taxation Code Section 23101. See Cal. Rev. & Tax. Code § 23101. As revised, Section 23101 states that a retailer and manufacturer may be found to be "doing business" in California if its sales in California exceed the lesser of $500,000 or 25 percent of its total sales. *Id.*

2. Whether a company qualifies as a manufacturer or retailer depends upon how it describes its "Principal Business Activity" in tax filings to the state Franchise Tax Board. *See id.* at § 1714.43(a)(2)(C-D).

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