Bill S-211, An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff

SHARE (Shareholder Association for Research and Education) brief to the

Standing Committee on Foreign Affairs and International Development

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Recommendations re Bill S-211, *An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff*

The Shareholder Association for Research and Education (SHARE) is encouraged by Canadian parliamentarians' efforts to address corporate impacts on human rights. Institutional investors have a duty to ensure that the entities in which we invest have sound policies, consistent oversight, and effective management designed to address human rights risks in their operations and global supply chains. This duty is set out by the Responsible Business Conduct considerations for institutional investors under the OECD Guidelines for Multinational Enterprises ("OECD Guidelines"). Investor Signatories to the United Nations Principles for Responsible Investment ("UNPRI") are also expected to adopt and report on human rights due diligence practices by 2025.

Based on our experience of regularly engaging companies on their human rights impacts, we believe mandatory human rights due diligence (MHRDD) legislation is the most appropriate legislative model to drive the necessary change in preventing and addressing adverse human rights impacts by corporations. Robust MHRDD legislation would support Canadian companies in attracting and maintaining investment and delivering long term value to investors. An MHRDD approach would ensure that Canada keeps pace with global peers and trading partners that are increasingly adopting this model.

Compared to MHRDD legislation, Bill S-211, An *Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act,* falls significantly short. Bill S-211 is insufficient, on its own, in addressing the human rights risks that civil society groups, investors, and companies, have identified. First, S-211's exclusive focus on forced labour and child labour excludes many other salient corporate human rights risks and impacts. Second, Bill S-211 only requires that companies file reports; it does not create an expectation or obligation for companies to conduct human rights due diligence. Third, Bill S-211's accountability regime, which imposes modest fines on companies for failing to file reports, is unlikely to adequately incentivize meaningful action by some companies.

Notwithstanding the above, if Canada pursues the legislative approach of Bill S-211 as an interim measure, SHARE proposes the following amendments to make the legislation as effective as possible:

1. **Require due diligence**

The Government of Canada should signal its expectation that companies *will* conduct due diligence, rather than simply requiring entities file a report.

As the Bill currently stands, companies simply reporting that they have taken *no* action to identify, prevent, mitigate or account for how they address forced labour and child risks would

meet their obligations under the law. Requiring entities to solely report on the supplementary information outlined in Section 11(3) will not hold them accountable for existing and/or potential human rights harms, nor will severe and salient forced labour and child labour risks be meaningfully identified, prevented, addressed, or mitigated.

2. Broaden application of reporting obligations to cover entities providing services.

Section 9 outlines the criteria that triggers an obligation for entities to submit a report: producing, selling, or distributing goods in Canada or elsewhere, or importing goods into Canada. Since the largest share of total adult forced labour exploitation – almost one-third or 5.5 million people worldwide in absolute terms – is in the services sector (e.g. transport and) hospitality (ILO, 2022), we propose that section 9 be amended to include entities providing services.

3. Recommendations related to reporting requirements.

In the following list we outline our recommendations for enhancing the information required in the annual reports filed by covered entities as outlined in Section 11(3). While as investors we are primarily concerned with the disclosures of companies, we also support identical amendments being made to the reporting requirements for government institutions in Section 6(2).

a) Encourage disclosure of relevant human rights expertise.

The annual report requirements outlined in Section 11(3) of Bill S-211 do not provide investors or other end users with sufficient information to assess the validity or comprehensiveness of the forced labour or child labour risks identified by the entity. We propose that wording be added to Section 11(3)(c) as follows:

> *(c) the parts of its business and supply chains that carry a risk of forced labour or child labour being used, how those risks were identified, including whether by a third-party with relevant human rights expertise, and the steps it has taken to assess and manage that risk;*

b) Provide information on how companies prioritize actions to address actual and potential salient human rights impacts, including but not limited to forced labour and child labour.

The UN Guiding Principles on Business and Human Rights (UNGPs) provides commentary on how companies should prioritize impacts for attention, when such prioritization is necessary (e.g. owing to operations in a large number of contexts, complex supply chains, or has a multitude of business partners and "legitimate resource and logistical constraints") (Principle 24). Given that many human rights impacts are interrelated, investors require information to situate a company's efforts to address forced labour or child labour in the context of its broader human rights due diligence process.

We propose a new item be added to the alphabetical list in Section 11(3) ('Supplementary information), possibly after (c):

> (x) *the other salient human rights impacts identified by the entity and how it is prioritizing actions to address actual and potential salient human rights impacts*

c) Require disclosure of evidence, monitoring and effective implementation.

In order for investors to assess the effectiveness of a company's polices and due diligence processes, companies should be required to disclose related outcomes and how their actions to address adverse human rights impacts are evaluated and revised for effectiveness. Section 11(3)(g) could be revised as follows:

> *(g) how the entity assesses its effectiveness in ensuring that forced labour and child labour are not being used in its business and supply chains, including disclosure of due diligence outcomes, relevant key performance indicators, and relevant corrective action plan processes.*

d) Require entities to consult stakeholders who may be affected by the implementation of the legislation

The UNGPs clearly state that due diligence "should […] involve meaningful consultation with potentially affected groups and other relevant stakeholders" (Principle 18). For investors, evidence of robust and meaningful stakeholder engagement is seen as a necessary part of good corporate sustainability strategy and practice.

We propose a new item be added to the alphabetical list in Section 11(3) ('Supplementary information):

> (x) *the entity's process for consulting with external stakeholders to inform its efforts to identify, prevent, and mitigate forced labour and child labour;*

e) **Require entities to disclose grievance mechanisms**

Despite a company's best efforts to identify and prevent adverse human rights impacts from occurring in the first place, investors want clarity on the mechanisms the company has in place to receive information on possible instances of child labour or forced labour from external stakeholders, and transparency regarding how those mechanisms are being utilized.

We propose new items be added to the alphabetical list in Section 11(3) ('Supplementary information):

> *(x) the mechanisms the entity has in place to receive grievances from internal and external stakeholders related to potential occurrences of child labour and/or forced*

labour, and a summary of 1) grievances received in the preceding year 2) how the entity addressed the grievances received in the preceding year.

(x) disclosure on whether and how the grievance mechanism is accessible for internal and external stakeholders.

(x) the entity's commitment towards non-retaliation of stakeholders, particularly workers, and existing policies that extend this commitment to its suppliers.

4. Increase fines to deter non-compliance

Bill S-211's current fines for non-compliance ($250,000) are not likely to be sufficient in ensuring compliance, particularly amongst large corporations. We propose the fines be made on a continuing basis, as is this case with the *Extractive Sector Transparency Measures Act*, a similar piece of reporting legislation.

We propose that the following be added to section 19:

Continuing offence

(3) *If an offence under this section is committed or continued on more than one day, it constitutes a separate offence for each day on which the offence is committed or continued.*

ABOUT SHARE

SHARE is a Canadian leader in responsible investment services, research and education for institutional investors. Since its creation in 2000, SHARE has carried out this mandate by providing active ownership services, including proxy voting and engagement, education, policy advocacy, and practical research on issues related to responsible investment and the promotion of a sustainable, inclusive and productive economy. Our clients include pension funds, universities, mutual funds, foundations, Indigenous trusts, endowments, faith-based organizations and asset managers across Canada with more than $90 billion in assets under management.