CALIFORNIA CLIMATE ACCOUNTABILITY PACKAGE – OVERVIEW AND IMPLICATIONS

In September 2023, the California Legislature passed a series of bills known as the "California Climate Accountability Package" or "CCAP". The CCAP comprises three bills, including S.B. 253 (the "Climate Corporate Data Accountability Act" or "CCDA") and S.B. 261 (the "Climate-Related Financial Risk Act" or "CFRA"), which will require U.S.-based companies doing business in California to disclose greenhouse gas ("GHG") emissions and climate-related financial risks. We review the basic structure, triggers and contours of the CCDA and CFRA below.

WHO'S IMPACTED?

Any U.S. company "doing business in California" that crosses certain revenue thresholds will be subject to the CCDA and CFRA once they take effect. A company is considered to be doing business in California if it:

- Is organized or domiciled in California;
- Has sales in California in a given tax year that exceed the lesser of $690,144 (for 2022) or 25 percent of the entity's total sales (including sales by an agent or independent contractor of the entity);
- Has real and tangible personal property in California in a given tax year valued in excess of the lesser of $69,015 (for 2022) or 25 percent of the entity's total real and tangible personal property; or
- Pays compensation in California in a given tax year in excess of the lesser of $69,015 (for 2022) or 25 percent of the entity's total compensation paid.

If such a company, regardless of where it is located in the United States, has in excess of $1 billion in revenue in a given tax year, it will be subject to the CCDA. If it has in excess of $500 million in revenue, it will be subject to the CFRA. This is not limited to California-related revenue.

ARE THERE EXCEPTIONS?

No U.S. companies doing business in California are exempted from the CCDA. Insurance companies are exempted from the CFRA.

WHAT'S REQUIRED?

CCDA	CFRA
Measure and disclose the applicable GHG emissions for the entire company (not limited to California-related emissions).	Prepare and submit a biennial report disclosing the company's climate-related financial risk, and the measures it has adopted to reduce and adapt to climate-related financial risk.
First report (covering scope 1 and 2 emissions) is due in 2026 (covering FY 2025). Subsequent report (covering scope 1, 2 and 3 emissions) is due in 2027, and annually thereafter.	First report due January 1, 2026. Subsequent reports are due biennially thereafter.
Companies must have their reports independently audited by a third-party assurance provider.	Companies must make their reports available to the public on their website.
Payment of an annual fee, to be set.	Payment of an annual fee, to be set.

WHAT ARE THE PENALTIES FOR NON-COMPLIANCE?

CCDA	CFRA
Civil penalty of up to $500,000	Civil penalty of up to $50,000

WHAT'S REQUIRED?

The CCAP is applying standards for measuring and reporting GHG emissions and for assessing climate-related risk that are consistent with standards adopted in Europe under the EU's Corporate Sustainability Reporting Directive ("CSRD") and its European Sustainability Reporting Standards ("ESRS"):

CCDA	CFRA
Measurement and reporting of emissions in conformance with the "GHG Protocol" for GHG accounting and reporting, a standard developed by the World Resources Institute and the World Business Council for Sustainable Development.	Assessment of climate-related financial risk in accord with the framework of the Final Report and Recommendations of the Task Force on Climate-related Financial Disclosures (June 2017) published by the Task Force on Climate-related Financial Disclosures ("TCFD").

WHAT ARE SCOPE 1, 2 AND 3 EMISSIONS?

- **Scope 1** emissions are those emanating from sources that an organization owns or directly controls, regardless of location (e.g., from fleet vehicles, manufacturing operations, etc.).
- **Scope 2** emissions are those a company causes indirectly and that come from where the energy it purchases and uses is produced, regardless of location (e.g., emissions caused when generating the electricity, steam, heating or cooling that is used in company buildings).
- **Scope 3** emissions are those not produced by the company itself, but for which it is indirectly responsible both upstream and downstream (e.g., via the goods and services it buys, from business travel and employee commutes, and from the processing and use of products it sells, etc.).

WHEN WILL THIS TAKE EFFECT?

Unless stayed, delayed, repealed or rolled back via legal challenge, the first obligations under the CCDA and CFRA will take effect in 2026, with qualification under both based on fiscal year 2025 revenues and exposure to the California market. This leaves companies with California-related business activities and revenue at or near the CCDA and CFRA thresholds that are not already taking steps to begin measuring GHG emissions and assessing climate-related financial risk a modest window in which to prepare for possible CCAP obligations.

For companies with extensive operations inside or outside California, compliance could prove to be burdensome without adequate advance planning.

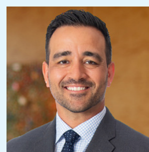
WHAT'S NEXT?

The California Air Resources Board ("CARB"), the regulatory entity responsible for CCAP implementation and oversight, has until January 1, 2025 to adopt regulations implementing the CCDA. Although those regulations could impact some of the specifics around the measurement and reporting standards, it is unlikely they will impact the standards by which a company will be subject to the CCDA.

It is also possible, and potentially inevitable, that some or all of the CCAP will be challenged in court. Whether that occurs and what outcome might follow is uncertain.

CONTACTS

ALEX J. BRACKETT
PARTNER
MCGUIREWOODS LLP
+1 804 775 4749
abrackett@mcguirewoods.com



RYAN J. PIERINI
SENIOR VP, STATE GOVERNMENT RELATIONS
MCGUIREWOODS CONSULTING LLC
+1 310 315 8281
rpierini@mwcllc.com