

Spotlight on approaches for comprehensive compliance:

With the expiry of the referendum deadline for the indirect counter-proposal to the Responsible Business Initiative, new obligations will apply to Swiss companies

What changes will this bring for your company?



Responsible Business Initiative – What happened so far?

Chronology

- On 29 November 2020, the federal popular initiative "*The Responsible Business Initiative – Protecting human rights and the environment*" ("Responsible Business Initiative", "RBI") was rejected by the people of Switzerland
- With the rejection, the indirect counter-proposal by Swiss Parliament will enter into force
- In the post-vote period, the Swiss Federal Supreme Court has denied two complaints in connection with interventions by national churches and parishes prior to the vote on the RBI
- On 5 August 2021, the referendum deadline regarding the counter-proposal expired without a referendum
- As a result, new provisions on due diligence and reporting obligations are expected to come into force on 1 January 2022
- The transition period is expected to be 1 year (i.e. provisions become effective as of 1 January 2023)
- The counter-proposal provides for a general reporting obligation on non-financial matters as well as due diligence and reporting obligations in connection with conflict minerals and child labour

Reporting on non-financial matters – Is your company affected? (1/2)

Affected: Companies of public interest

Public companies



Banks *



Insurance companies *



controlling domestic or foreign companies, which have:

- an annual average of at least 500 full-time positions
- over two consecutive years at least a balance sheet total of CHF 20 million
- or a revenue of CHF 40 million

* or other regulated entities in the financial industry

Reporting on non-financial matters – Your duties and risks (2/2)



Your duties:

- Principle: **"comply or explain"**
- Reporting on environmental issues, in particular **CO2 targets, social issues, employee concerns, respect for human rights and the fight against corruption**
 - Description of the business model and the concepts for compliance with the above concerns
 - If no concept is available, the report must contain a transparent and founded explanation
 - Presentation of the measures taken to implement these concepts and an evaluation of its effectiveness
 - Description of the main risks in relation to the above concerns and how they are managed

Your risks:

- Penal sanction up to a maximum of CHF 100,000

Reporting in the areas of conflict minerals and child labour – Is your company affected? (1/2)

In general, all companies with risks within the supply chains in the sensitive areas of conflict minerals and child labor are affected

Large enterprises



SMEs



Exception: among others, low-risk companies



Exemption regulations:

→ **Regarding conflict minerals:**

- Exemption for low import and processing quantities
- Companies that comply with internationally recognised equivalent regulations

→ **Regarding child labour:**

- For SMEs as well as for companies with low risks associated in this area
- Companies that comply with internationally recognised equivalent regulations

Reporting in the areas of conflict minerals and child labour – Your duties and risks (2/2)



Your duties:

- Maintaining a management system in which the supply chain policy is recorded and traceability is provided
- Identification and assessment of risks in the supply chain
- Audit of compliance with due diligence requirements in the area of conflict minerals by authorised independent persons
- Annual reporting on compliance with due diligence obligations

Your risks:

- Penal sanction up to a maximum of CHF 100,000

GRC approach as an industry standard?

GRC as an integrated and individualised solution approach

- GRC (*Governance, Risk and Compliance*) approach as a coordinated, integrated and holistic compliance and risk management system as a response to a complex and dynamically changing business environment
- Connecting the areas leads to synergies of the internal functions risk management, internal control, compliance and internal audit, to a coherent assessment of corporate risks and improves the information basis for strategic decisions and operational measures
- Three-Lines of Defense model as a well-known industry standard for the interaction of subsystems based on the principle of cause-based allocation of responsibility for risks:
 - First line: Operational management
 - Second line: Compliance or legal department
 - Third line: Internal audit
- **Important:** There is no such thing as "the" standard GRC system. An efficient GRC model is based on the individual risk profile and business environment of each company

Our recommendation: Act now!



Your company can take action today:

- Identify risks → Review activities of Group companies and the supply chain
- Evaluate risks → Assess the probability of occurrence and potential damage
- Addressing risks → Derive risk-minimising measures

What are the benefits of these actions for your company?

- The earlier risks are identified, the more effectively they can be controlled in the future
- Building a compliance system that meets due diligence and reporting requirements requires time
- Corporate social responsibility can also positively affect the perception of your company. Under the label "we care", your company can play a leading role today

Your partner: We support you in the implementation!



- As an international law firm with offices in over 40 countries, we offer a wide range of combined experience and know-how and can draw on the expertise of our CMS colleagues in other jurisdictions where comparable legal requirements already apply
- We will review your structures and implement existing compliance components in a coherent and convincing overall concept (e.g. according to the GRC approach) so that your company can address future due diligence and reporting obligations today
- We want to work with you to achieve the highest possible positioning of your company and create structures that will prevent compliance violations over the long term

Our expertise: What we can do for you



Efficient and effective identification and assessment of risks through the use of CMS Legal Tech tools:

- **CMS Survey:** A tool for efficient control of query processes and risk analysis
cms.law/innovation/how-we-help-our-clients-innovate/cms-survey
- **CMS Interview:** A tool for more effective planning, control and evaluation of interviews
cms.law/innovation/how-we-help-our-clients-innovate/cms-interview
- **CMS Evidence:** A tool for efficient support in internal investigations
cms.law/innovation/legal-tech-tools-and-teams/cms-evidence

Determination recommendations for action and measures to minimise risk:

- Establishment of a risk management system
- Elaboration of the Code of Conduct and risk-specific guidelines
- Employee training courses
- Establishment of internal and external complaints procedure

Your contact persons



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