

**DECEMBER 9, 2020**

For more information,
contact:

Vanessa Alarcon Duvanel
+41 22 591 0813
valarcon@kslaw.com

King & Spalding

Geneva
5 Quai du Mont Blanc
1201 Geneva
Switzerland
Tel: +41 22 591 0800

The Swiss Responsible Business Initiative Has Been Rejected, but the Government's Counter-proposal Will Likely Enter Into Force: Brief Overview of the New Duties for Companies

In a public vote on 29 November 2020, the Swiss electorate rejected the Responsible Business Initiative (the "RBI"). After an intensive ideological campaign, the RBI received 50.7% of the votes but failed to win support in a majority of cantons, a necessary condition for a public initiative.

The RBI, launched in 2015, would have required Swiss companies and the firms they control abroad to identify, prevent and mitigate their adverse impact on human rights and the environment in all their business activities. Compliance would have been enforced by introducing a new vicarious liability regime for damages caused by controlled foreign companies in their value chain.

Instead, a milder government counter-proposal is expected to come into force in 2021 (provided no new referendum is called). The counter-proposal follows the same preventive purpose of the RBI without introducing a civil liability. It imposes extensive non-financial reporting duties on certain human rights, environmental, social, anti-corruption and employment-related matters. It also lays down additional due diligence and transparency duties with regard to conflict minerals and child labor. The proposed new article 964^{bis} *et seq.* of the Swiss Code of Obligations will affect Swiss companies active in the importation or processing of minerals or certain materials from conflict regions or offer products or services where there are reasonable grounds to suspect child labor. Below are three novelties that the new regulation would introduce:



Non-Financial Reporting Duties. Large Swiss public interest entities (i.e., public companies and regulated financial institutions) will have to issue an annual report describing due diligence practices and processes applied in relation to non-financial matters (human rights, environmental, social, anti-corruption and employment-related). The report will extend to controlled entities world-wide. This duty to report is in line with the EU Directive 2014/95/EU on non-financial reporting.

Due Diligence and Transparency Duties. A specific supply chain-related due diligence will apply to all Swiss businesses that circulate or process “conflict minerals” in Switzerland (based on EU Regulation 2017/821) or offer goods or services in relation to which there is reasonable suspicion of child labor (based on Dutch Child Labor Due Diligence Act). Among other duties, companies falling under the scope of these new rules will be required to implement a supply chain risk management plan to adequately identify supply chain risks and to manage and mitigate them. They will also be required to file an annual report on the company's compliance with their due diligence duties. Due diligence on minerals and metals will be subject to an independent audit.

No Civil Liability, but Criminal Sanctions. Non-compliance with the applicable annual reporting duties or the making of false statements is subject to criminal liability resulting in a fine of up to CHF 50,000 in case of negligence or CHF 100,000 in case of an intentional breach.

Swiss businesses are already generally socially responsible and the reporting obligations should serve as a reminder and a tool to eliminate the exceptions to the rule.

ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,200 lawyers in 22 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered “Attorney Advertising.” View our [Privacy Notice](#).

ABU DHABI	CHARLOTTE	GENEVA	MOSCOW	RIYADH	TOKYO
ATLANTA	CHICAGO	HOUSTON	NEW YORK	SAN FRANCISCO	WASHINGTON, D.C.
AUSTIN	DUBAI	LONDON	NORTHERN VIRGINIA	SILICON VALLEY	
BRUSSELS	FRANKFURT	LOS ANGELES	PARIS	SINGAPORE	