

NKF Client News

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Switzerland's New ESG Reporting Regime: What It Means For Your Business

ESG reporting requirements are a topic that no Swiss company can afford to ignore. Although the Responsible Business Initiative (Konzernverantwortungsinitiative), which proposed a far-reaching set of corporate ESG disclosure obligations, was rejected in a Swiss referendum late last year, a softer alternative (the Indirekter Gegenvorschlag zur Volksinitiative) is expected to come into force towards the end of this year or early next year.

1. What will the new law require?

- Certain companies domiciled in Switzerland will be required to publish an annual ESG report, and to submit the report for board and shareholder approval
- All Swiss companies that import minerals from conflict or high risk areas, or whose products or services may have a connection to child labour, will be required to carry out specific due diligence processes on their supply chain and report on these processes

2. Will this new law apply to your business?

The requirement to publish an annual ESG report will only apply to Swiss "public interest" companies – i.e. **listed companies, banks, insurance companies and other supervised financial institutions** domiciled in Switzerland – that have, on a group-wide basis:

- at least **500 full-time equivalent employees** (on an annual average basis); and
- **assets of over CHF 20 million or revenues of over CHF 40 million** for two consecutive years

The requirement to carry out specific due diligence processes will apply to all companies with a registered headquarter, central administration or principal place of business in Switzerland which:

- import or process minerals or metals containing tin, tantalum, tungsten or gold from conflict or high-risk regions; or
- offer products or services where there are reasonable grounds to suspect that child labour was involved in their manufacture or supply

3. What does my business need to do to comply?

3.1 ESG Reports

For companies subject to the new ESG reporting scheme, it will be necessary to publish an ESG report on an annual basis, in one of the Swiss national languages or in English. Although the report does not need to be audited, it must be submitted to the board of directors and to shareholders for approval and signed by the board of directors. The contents of the report must, at a minimum, include:

- a description of the company's **business model**;
- an **assessment of the primary ESG risks** arising from the company's business and, if appropriate, its business relationships, products and services;
- an explanation of the **policies implemented to mitigate these risks**, as well as the **outcome of those policies**; and
- a description of the **non-financial key performance indicators** used to assess the company's response to ESG risks

The report can follow established national, European or international reporting standards, such as the GRI, provided it also complies with the new Swiss regulations. Further guidance may be taken from the EU's guidelines on reporting non-financial information set out in the EU Non-Financial Reporting Directive (Directive 2014/95), which address each of the above requirements. To the extent the report does not address one of the required areas, an appropriate explanation must be provided (following the common "comply or explain" approach). The report must be made available for a period of at least 10 years.

3.2 Due Diligence Obligations

The due diligence obligations require companies to implement policies and processes, including due diligence and tracing processes, that address supply chain risks in respect of the supply of conflict minerals and of products and services that potentially involve child labour. Any due diligence measures in respect of conflict minerals are subject to audit by an independent expert.

The company must publish a report in respect of its policies and processes on an annual basis, in one of the Swiss national languages or in English. The report must be submitted for approval to the board of directors, but not to shareholders. The report must be made available for a period of at least 10 years.

4. What happens if my business fails to comply?

A company who fails to comply with the new requirements is exposed to criminal liability, with a fine of up to CHF 100,000 for intentional non-compliance and up to CHF 50,000 for negligent non-compliance. Non-compliance includes the making of false statements in the applicable reports, or failure to make, publish or keep record of a report. In addition to criminal liability, it will be open to shareholders to attempt to impose civil liability on the company's board of directors and/or management for non-compliance, provided that evidentiary requirements are met (e.g. the ability to establish damage resulting from the non-compliance).

5. What happens next?

On 27 April 2021, the Swiss federal council approved the referendum result rejecting the Responsible Business Initiative. As a consequence, a 100-day period has started during which time it is possible to request a new referendum – this period runs until 5 August 2021. On the same day, the wording of the counterproposal was published in the Swiss Bundesblatt. On the basis of this timing, the new law is expected to enter into force later this year or early next year. That will mean that companies with a financial year ending 31 December will be subject to the new regime starting from 2022 or 2023, with ESG reports required to be published for the first time the year thereafter. If your business is subject to the new requirements, now is the time to start making preparations and assessing what needs to be done.

Even companies whose business is not subject to the new requirements should be aware of the rapid pace of developments in the field of ESG. It is clear that the current legislative changes are just the first step in broadening corporate ESG disclosure obligations in Switzerland. All Swiss companies, whether captured by the current changes or not, would do well to get prepared.

NKF is on hand to support you in navigating this new corporate landscape

If you have further questions or comments on this topic, please reach out to your regular NKF contact.

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