

# SWISS PARLIAMENT CALLS FOR PARENT COMPANY LIABILITY FOR HUMAN RIGHTS BREACHES

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Legal Briefings - By **Oliver Elgie, Senior Associate**

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Switzerland is the latest in a series of countries to consider whether to compel its companies to respect human rights throughout their business activities. The Legal Affairs Committee of the Swiss Parliament's Council of States has acknowledged that human rights violations by Swiss based companies are of great concern. To combat that, they have announced that a new Bill should be drafted based on three cornerstones:

- Human Rights Due Diligence should be mandatory for all large companies and SMEs operating in high-risk areas;
- There should be effective sanctions for non-compliance; and
- Parent companies should be liable for serious human rights abuses committed by their subsidiaries.

This announcement was made in response to the Swiss [Responsible Business Initiative](#) ("**RBI**") which is seeking a similar amendment to the Federal Constitution. It represents a potentially important step towards legislation in Switzerland that might go further than the [UK Modern Slavery Act](#) and could be similar to the [French Corporate Duty of Vigilance](#) or the potential law recommended by the [UK Joint Committee on Human Rights](#) earlier this year.

## THE RESPONSIBLE BUSINESS INITIATIVE

The RBI seeks an amendment to the Swiss Federal Constitution that would require companies to conduct mandatory human rights due diligence, in line with their [UN Guiding Principles](#) responsibilities. The amendment seeks to hold any company that does not undertake such mandatory due diligence liable for human rights abuses committed by companies under its control, including those committed abroad. The amendment has been sought by way of a "popular initiative".

### POPULAR INITIATIVES IN SWITZERLAND

A popular initiative allows Swiss citizens to request amendments to the Federal Constitution. Any initiative that collects at least 100,000 signatures within 18 months may be submitted to the Federal Council and the Parliament for consideration. The Federal Council will then either: accept the initiative, reject it or draft a counter-proposal. A counter-proposal takes the form of a legislative amendment that could be adopted instead of the initiative. Irrespective of the response of Parliament, although provided that the initiative is not retracted, the initiative will be put to a public vote. A majority of both the public and the cantons is required for the amendment to pass. If both chambers of Parliament agree on a legislative counter-proposal, then that counter-proposal is adopted should the initiative is rejected by the public vote.

### THE STORY SO FAR



#### April 2015

The [Swiss Coalition for Corporate Justice](#) (or the "SCCJ"), a coalition of now 85 civil society organisations, launches the RBI



#### 18 April 2016

The SCCJ announce that over 140,000 people have signed the petition in support of the RBI



#### 10 October 2016

The RBI is submitted to the Swiss Parliament and Federal Council



#### 15 September 2017

The Swiss Federal Council publishes its [message in response](#) to the RBI stating that it intended to continue to rely on voluntary mechanisms



#### 20 October 2017

Professor [John Ruggie wrote](#) to the Swiss Legal Affairs Committee expressing disappointment at the lack of Governmental counter-proposal



#### 14 November 2017

The Committee announces that a counter-proposal by way of a bill at statute level should be developed



## **WHAT NEXT?**

The Swiss National Council (the Swiss Parliament's lower house) needs to state its position on the Council of States' counter-proposal and the counter-proposal would need to be developed into a draft bill before its likely impact can be properly assessed.

In any event, it is anticipated that the public referendum on the initiative (and potentially therefore also the new bill as a counter-proposal) will take place towards the end of 2018 or the beginning of 2019. Following that referendum, there will be a clear view on the likely developments in this area in Switzerland.

## **COMMENT**

The Swiss Responsible Business Initiative and the Committee's counter-proposal are the latest example of efforts to make elements of UN Guiding Principles binding through domestic regulation. In particular, there is ongoing pressure on governments to make human rights due diligence mandatory and to impose liability on companies whose operations cause harm that appropriate human rights due diligence could have prevented.

[Business and Human Rights hub](#)



## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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