

SWITZERLAND TO HOLD REFERENDUM ON PROPOSED HUMAN RIGHTS DUE DILIGENCE LAW

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Legal Briefings

A referendum on a Swiss civil society initiative on mandatory human rights and environmental due diligence for companies is expected to be held towards the end of the year.

A number of countries are currently debating similar laws, after France introduced the Law on the Corporate Duty of Vigilance in 2017, which made it the first country in the world to introduce mandatory human rights due diligence, albeit only for large companies (see our briefing [here](#))¹

The concept of human rights due diligence comes from the United Nations Guiding Principles for Business and Human Rights (**UNGPs**). The UNGPs are a non-binding set of guidelines recommending that businesses carry out human rights due diligence to identify, prevent, mitigate and account for actual and potential adverse human rights impacts which the enterprise may cause, contribute or be linked to.

Under Swiss law, a public initiative supported by at least 100,000 signatories can become the topic of a nationwide referendum. In 2016, the organisers of the “Responsible Business Initiative” obtained the required signatures for a far-reaching proposal to introduce mandatory human rights due diligence and direct liability of businesses for breaches of human rights and environmental standards (**Proposal**). In particular, the Proposal:

- requires companies headquartered or registered in Switzerland to respect human rights and international environmental standards in their operations abroad, and to ensure that companies under their control respect these standards as well. The Proposal therefore extends the application of Swiss law not only to Swiss companies' subsidiaries abroad but also to any company under the *de facto* control of a Swiss company, including in some cases parts of their supply chains and subcontractors;
- makes it mandatory to conduct human rights and environmental due diligence;
- introduces direct liability of companies for violations of human rights and environmental standards by companies under their control; and
- reverses the burden of proof in part, requiring the company to establish that it took the requisite care to prevent such violations, or that the damage would have occurred even if the requisite care had been taken.

This Proposal is far-reaching, in particular the proposed partial reversal of the burden of proof and the extension of liability under Swiss law for actions by foreign suppliers. There are some parallels with the April 2020 proposal by the EU Commission to introduce an EU-wide legal duty to conduct human rights due diligence, to impose sanctions for non-compliance, and to consider allowing victims of corporate abuse to obtain remedies (see our briefing [here](#)).²

Before a referendum on any civil society initiative is held, the Swiss legislature can prepare a counter-proposal which, if accepted by the organisers of the initiative, becomes the law. In this case, the two chambers of the Swiss parliament prepared diverging counter-proposals. The first counter-proposal would have replicated the key aspects of the Proposal; the second contains due diligence requirements regarding human rights, environmental standards, conflict minerals and child labour, but without the provision for liability of parent companies under Swiss law for actions of their controlled companies abroad.

On 5 June 2020, the conciliation committee debated both counter-proposals and voted in favour of the latter, softer approach, which was approved by both chambers of parliament the following week. The members of the Responsible Business Initiative have already rejected the softer counter-proposal, indicating that the Proposal will not be withdrawn. This opens the door for a referendum on the Proposal and the parliamentary counter-proposal in late 2020.

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1. <https://www.herbertsmithfreehills.com/latest-thinking/respecting-human-rights-a-snapsh-ot-of-the-french-law-on-the-corporate-duty-of>
 2. <https://www.herbertsmithfreehills.com/latest-thinking/2021-law-will-make-human-rights->

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KEY CONTACTS

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