

– unofficial translation of the counter-proposal by the Swiss Parliament to the citizen initiative 'Responsible Business Initiative'

[[bill](#) published by the Legal Affairs Committee of the National Council on May 4th 2018 in French and German, **explanatory report** published by the Committee on May 18th 2018 in [French](#) and [German](#), bill adopted without changes by the National Council on June 14th 2018 (official [French](#) text p. 204-213, official [German](#) text p. 207-216), pending in the Council of States] –

Proposal by the Legal Affairs Committee of the Swiss National Council

Responsible Business Initiative: indirect counter-proposal

Art. 716a CO [[Code of Obligations](#)] *Non-transferable duties*

1 ...

5. overall supervision of the persons entrusted with managing the company, in particular with regard to compliance with the law, articles of association, operational regulations and directives as well as the provisions for the protection of human rights and the environment also abroad;

10. For companies, which are required to adopt measures relating to the compliance with the provisions for the protection of human rights and the environment: the compilation of the report in accordance with Art. 961e CO.

Art. 716a^{bis} CO (new) 2a *Compliance with the provisions for the protection of human rights and the environment also abroad*

¹ The board of directors takes measures to ensure that the company complies with the provisions for the protection of human rights and the environment relevant to its areas of activity, including abroad. It identifies potential and actual impacts of the business activities on human rights and the environment and assesses these risks. Taking into account the company's ability to exert influence, it takes effective measures to minimize the identified risks concerning human rights and the environment as well as to ensure effective remedy for violations. It monitors the effectiveness of the measures adopted and reports on them. Impacts of business activities of controlled companies or due to business relationships with a third party are also subject to this due diligence.

² For this due diligence process the board of directors is primarily concerned with the most severe adverse impacts on human rights and the environment. It respects the principle of appropriateness.

³ This Article applies to companies which, alone or together with one or more domestic or foreign companies controlled by them, exceed two of the following values in two consecutive financial years:

- a. balance sheet total of 40 million Swiss francs;
- b. sales of 80 million Swiss francs;

c. 500 full-time positions on an annual average.

⁴ This Article furthermore applies to companies whose activities entail a particularly high risk of violating the provisions for the protection of human rights and the environment, also abroad. It is not applicable to companies with such a risk that is particularly small. The Federal Council issues implementing provisions in this regard.

⁵ In principle, this Article shall not apply to companies controlled by a company to which it applies. However, with the exception of the reporting requirement, it is also applicable to companies which in turn control one or more foreign companies if they exceed the thresholds set out in paragraph 3 and their business activities are closely related or if the activities of the foreign companies involve a particular risk within the meaning of paragraph 4.

⁶ Where the law refers to the provisions for the protection of human rights and the environment also abroad, this refers to the corresponding international provisions, which are binding for Switzerland.

Art. 810 II. CO Duties of managing directors

² ...

4. Supervising of the persons who are delegated management responsibilities, in particular with regard to compliance with the law, articles of association, regulations and directives as well as the provisions for the protection of human rights and the environment also abroad;

Art. 810a CO (new) IIa Compliance with the provisions concerning the protection of human rights and the environment also abroad

Article 716a^{bis} shall apply by analogy.

Art. 901 CO 5 Compliance with the provisions for the protection of human rights and the environment also abroad

Article 716a^{bis} shall apply by analogy.

Art. 69a^{bis} CC [[Swiss Civil Code](#)] (new) 3. Compliance with the provisions concerning the protection of human rights and the environment also abroad

Article 716a^{bis} Code of Obligation shall apply by analogy.

Third Section a Report on compliance with the provisions for the protection of human rights and the environment also abroad

Art. 961e CO (new) Report on compliance with the provisions for the protection of human rights and the environment

¹ For companies that are obliged by law to comply with the provisions for the protection of human rights and the environment also abroad, a report shall account for the fulfilment of the individual obligations in accordance with Article 716a^{bis}.

² This report shall be made publicly available.

Art. 55 CO C. Liability of employers

^{1bis (new)} In accordance with these principles, companies that are also obliged by law to comply with the provisions for the protection of human rights and the environment abroad are also liable for the damage caused to life and limb or property abroad by companies actually controlled by them in the performance of their official or business activities by violating the provisions for the protection of human rights and the environment. In particular, companies shall not be liable if they can prove that they have taken the measures required by law to protect human rights and the environment in order to prevent such damage or that they have not been able to influence the conduct of the controlled company in connection with the alleged infringements.

^{1ter (new)} A company does not control another company simply because the latter is economically dependent on that company.

Art. 759a CO Ca Limitation of Liability

The members of the Board of Directors and all natural persons involved in the management of the company shall not be liable to persons who have suffered injury to life and limb or property abroad through a company controlled by the company due to a violation of the provisions for the protection of human rights and the environment abroad.

Art. 918a CO Ca Limitation of Liability

Any liability of natural persons involved in the administration or management of the association towards persons who have suffered damage to life and limb or property abroad due to a violation of the provisions for the protection of human rights and the environment abroad of a company controlled by the association is excluded.

Art. 69a^{bis} CC (new) 3. Compliance with the provisions concerning the protection of human rights and the environment also abroad

² Any liability of the members of the board towards persons who suffered damage to life and limb or property abroad by another association controlled by the association or another controlled company due to a violation of the provisions for the protection of human rights and the environment abroad is excluded.

Art. 139a PILA [[Federal Act on Private International Law](#)] g. Violation of the provisions concerning the protection of human rights and the environment also abroad

¹ In the case of claims against companies which under Swiss law are obliged to comply with the provisions for the protection of human rights and the environment also abroad, due to damage to life and limb or property abroad as a consequence of a violation of the aforementioned provisions, the unlawfulness and culpability of conduct shall be assessed in accordance with these provisions. However, they shall be subject to the law applicable under Article 133, if in accordance with the purpose of the provisions of that law and the consequences thereof, this leads to a decision that is appropriate in the Swiss legal opinion, or if the unlawfulness and culpability of the conduct exist only under that law.

² Whether a company domiciled in Switzerland, which actually controls a company domiciled abroad, is considered liable for claims of the type mentioned and whether it can release itself from liability is determined by Swiss law.

³ Article 132 is reserved.