

## Model Law to implement the constitutional provisions of the Swiss Responsible Business Initiative (RBI)

A proposal published by the initiators in October 2020 (Full legal study available in [German](#))

CO [Swiss Code of Obligations], SCC [Swiss Civil Code] and PILA [Federal Act on Private International Law] are amended as follows:

Art. 716a Para 1 CO

2. Non-transferable duties

Duty bearers

<sup>1</sup> The board of directors has the following non-transferable and inalienable duties:

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 international provisions for the protection of human rights and the environment 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 Article 716a<sup>bis</sup> paragraph 1, number 4 CO.

Art. 716a<sup>bis</sup> CO

2a. Compliance with the provisions for the protection of human rights and the environment abroad

<sup>1</sup> The board of directors takes measures that should ensure that the company complies with the provisions for the protection of human rights and the environment relevant to its areas of activity, also abroad (due diligence). The board of directors thereby has the following duties:

Due Diligence

1. It identifies potential and actual impacts of the business activities on human rights and the environment and assesses them.

2. It takes measures to minimize the identified risks concerning human rights and the environment as well as to remedy violations.

3. It monitors the effectiveness of the measures adopted.

4. It reports about the fulfilling of the duties according to number 1–3.\*

<sup>2</sup> The due diligence process shall also cover the impacts of the business activities of controlled entities and relationships with business partners or other persons or entities, whether private or public.

<sup>2bis</sup> 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.

Reporting

\* Section Threea: Reports on Compliance with the provisions concerning the protection of human rights and the environment abroad

Art. 961e OR

The report pursuant to Article 716a<sup>bis</sup> paragraph 1 number 4 shall be made publicly available.

Personal scope	<p><sup>3</sup> 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:</p> <ul style="list-style-type: none"> <li>a. balance sheet total of 20 million Swiss francs;</li> <li>b. sales of 40 million Swiss francs;</li> <li>c. 250 full-time positions on an annual average.</li> </ul> <p><sup>4</sup> This Article furthermore applies to companies whose activities abroad entail a particularly high risk of violating the provisions for the protection of human rights and the environment. The Federal Council issues implementing provisions in this regard.</p> <p><i>[in addition, integration of the following articles to achieve implementation that is neutral regarding the legal form of the organisation: Article 810 paragraph 2 number 4 CO, Article 810a CO (<u>limited companies</u>); Article 901 paragraph 5 CO, Article. 69a<sup>bis</sup> paragraph (<u>cooperatives</u>); 1 SCC (<u>associations</u>); also transferred to <u>foundations</u> with the necessary adjustments]</i></p>
Norms	<p><sup>6</sup> Where the law refers to the provisions for the protection of human rights and the environment abroad, this refers to the corresponding internationally recognized provisions, to the extent that they are suitable for becoming effective with regard to companies as well.</p>
Liability	<p>Art. 55a CO</p> <p>II. Liability for undertakings controlled</p> <p><sup>1</sup> According to the principles of Article 55 CO, also companies that are obliged by law to comply with the provisions for the protection of human rights and the environment abroad, are liable.</p> <p><sup>1bis</sup> The companies are liable for personal injury or property damage caused abroad by companies actually controlled by them as a result of a violation of the provisions for the protection of human rights and the environment.</p>
Exemption from	<p><sup>2</sup> Companies shall not be liable, in particular, if they can prove that they have taken the measures provided for in Article 716a<sup>bis</sup> to prevent such damage or that the damage would have occurred even if due diligence had been exercised.</p> <p><i>[Para. 3 and 4 below]</i></p>
Control	<p><sup>3</sup> An entity controls another entity when it combines the entities under uniform control by majority vote or otherwise.</p> <p><sup>3bis</sup> In addition, an enterprise controls another enterprise if it does not group the latter under uniform management but is obliged to consolidate the latter in accordance with Article 963 paragraph 2. In this context, control exists only if, in accordance with Article 716a<sup>bis</sup>, it has had a duty to influence the conduct of the undertaking in connection with which the alleged injury is alleged to have occurred.</p> <p><sup>4</sup> This provision does not create liability for the conduct of third parties with whom the undertaking or an undertaking under its control has a business relationship.</p>

Art. 139a PILA [Federal Act on Private International Law]

g. Violation of provisions for the protection of human rights and the environment abroad

<sup>1</sup> Claims against companies which are obliged under Swiss law to comply with the provisions for the protection of human rights and the environment abroad, for violations of these provisions are subject to Swiss law.

Art. 160a PILA

*Va.* Compliance with the provisions for the protection of human rights and the environment abroad

In the case of companies with their registered office, head office or principal place of business in Switzerland, compliance with the provisions for the protection of human rights and the environment abroad is subject to Swiss law.