



Update on New Swiss Conflict Minerals and Child Labor Due Diligence Obligations

[Nina Spieler](#), [Andreas Balsiger Betts](#)

In January 2023, the new Swiss due diligence obligations entered into force, requiring Swiss companies to comply with due diligence and reporting obligations when importing or processing conflict minerals or offering products or services with risks of child labor. Firms must follow the new requirements for annual reports starting in 2024, covering the business year 2023. In this article we highlight the most important obligations of Swiss-based companies under the new regulation.

With the new rules, Switzerland is further aligning itself with EU and international rules and regulations, including the EU Conflict Minerals Regulation (EU 2017/821) and corresponding Organisation for Economic Co-operation and Development (OECD) Guidelines. In fact, the Swiss legislative changes affect two sets of obligations: the provisions on transparency of nonfinancial matters and the provisions on due diligence and transparency regarding minerals and metals from conflict zones (conflict minerals) and child labor. This update covers key elements from the second set of provisions as set forth in Articles 964j et seq. of the [Swiss Code of Obligations](#) and the [Due Diligence and Transparency Ordinance](#) (Ordinance).

Scope and extent of obligations

Under the new rules, companies whose registered office or head office is in Switzerland must comply with due diligence duties in their supply chain and reporting obligations if they have activities in one or both of the following areas:

- importing or processing of minerals or metals with quantities exceeding certain thresholds containing tin, tantalum, tungsten, or gold from conflict or high-risk areas into free circulation in Switzerland or processing these minerals in Switzerland (the Swiss Federal Council will set annual thresholds that, together with a list of conflict areas, will align with the EU Conflict Minerals Regulation); or
- offering products or services in Switzerland or abroad for which there is a reasonable suspicion that they are manufactured or provided using child labor as defined by the International Labor Organization (ILO); a reasonable suspicion is present when there exists a substantiated indication for inadmissible child labor based on internal or external information.

Companies are exempted from the obligations relating to child labor in two cases: They are a small or medium-size enterprise or present a low risk of child labor. A company is presumed

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to have a low risk of child labor if it exclusively sources products or services from countries classified as “basic” by the [UNICEF Children’s Rights in the Workplace Index](#).

However, no exemption is available for companies where concrete evidence on child labor in their products or services has been established. In practice, this will require more than a reasonable suspicion such as in the case of specific instances of child labor reported by judicial bodies, professional associations, the ILO, or other companies.

Furthermore, there exists an exception to both obligations relating to conflict minerals and child labor if a company adheres to an internationally recognized set of rules. This will require that a company follow the rules in their entirety, publishes a report, and refers to the applied set of rules in its report. In the area of conflict materials, either the OECD Guidelines or the EU Conflict Minerals Regulation must be applied. In the area of child labor, the exception requires companies to adhere to a list of relevant ILO conventions that are indicated in the Ordinance. Compliance with an international set of rules can take place at company or at group level.

Due diligence and reporting obligations

Swiss companies must establish and comply with an ongoing due diligence process that has to satisfy a number of minimum requirements. The mandatory requirements include a supply chain policy, a traceability system, a grievance system, and a risk management system. To comply, the supply chain policy must specify which instruments a company uses to identify, assess, eliminate, or mitigate the risks of potential adverse effects in its supply chain, such as on-site checks, consulting experts, assurances from business partners, or certifications. Moreover, companies must ensure that interested parties have an opportunity to report concerns about conflict minerals or child labor to the company. In addition, the rules require companies to adopt a traceability system that records certain information on product origins, suppliers, and processing steps. Finally, a risk management plan must be put in place that will monitor and identify risks in the supply chain relating to conflict minerals and child labor. These obligations are largely based on existing EU rules.

Compliance with the new obligations must be documented in an annual report published within the first six months of the following business year. The responsibility to report is situated with the highest management or administrative body, which in many cases will be the board of directors. The report must be prepared in an official language of Switzerland, or English, and describe how the due diligence obligations have been put into practice. Reports must be published electronically and made available for a minimum of 10 years. In the area of conflict minerals, compliance with the due diligence obligations must be audited by an external specialist authorized by the Swiss Federal Audit Oversight Authority.

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Companies with parent companies in a third country whose parent publishes an equivalent report do not have to publish a separate report. In this case it suffices if the company refers to the parent in its annual report and publishes the parent company's report. Note also that reporting must be done on a consolidated basis and that companies covered by a consolidated report are exempt from reporting obligations.

Compliance and penalties

The new requirements do not contain provisions for company liability. However, the rules include penalties in the form of fines for failing to report or inadequate reporting. A fine of up to CHF 100,000 applies to individuals responsible for missing or incorrect reports as well as those failing to make accessible reports for the required period. In the case of negligence, the fine is reduced to a maximum of CHF 50,000.

As these Swiss developments show, companies are coming under increasing pressure to monitor and address how their supply chains affect environmental, social, and governance (ESG)-related issues. As always, active preparation will be key for companies to stay on top of new obligations and align with requirements in different jurisdictions.

More information on ESG updates and how Sidley can help can be found on our [dedicated webpage](#).