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Client Note  
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# Swiss Popular Initiative

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On 29 November 2020 the Swiss electorate will vote on the Popular Initiative **'For responsible businesses – protecting human rights and the environment'**

**Ekur**

# **Swiss Popular Initiative**

## **Background to Swiss Popular Initiatives**

An amendment to the Swiss Federal Constitution can be requested by way of a popular initiative. The organizers of an initiative need to collect a list of 100,000 signatures from people entitled to vote within 18 months from the launch of their initiative (only full Swiss citizens over the age of 18 are entitled to vote in Swiss Federal initiatives). A person who signs the list is a legal declaration that they are in favour of the initiative. Initiatives can be proposed as a specific draft article or as a general proposal to be drafted later by the Swiss Federal Council and Swiss Parliament if the initiative succeeds.

Once the initiative organizers obtain 100,000 signatures, the Swiss Parliament examines whether the initiative respects the principles of consistency of form, unity of subject matter and the mandatory rules of international law. If this is not the case, the Swiss Parliament may declare the initiative totally or partially invalid. The initiative is put to the popular vote if the Swiss Parliament decides that it is valid. The Swiss Federal Council and Swiss Parliament may propose a direct or indirect counter-proposal to the initiative.

The initiative is put to the vote (unless the initiators withdraw it). If accepted by voters in a national referendum (held four times a year) then it comes into force straight away. If the referendum was on a specific clause (the most common type of popular initiative), then the text of the initiative is inserted into the text of the Federal Constitution immediately. Effective implementation can take some time – usually, the Swiss Federal Council and the Swiss Parliament must draw up and approve new implementing legislation.

## **Background to this Initiative**

Swiss companies are expected to uphold human rights and comply with environmental standards, not just in Switzerland but also when doing business abroad. Switzerland has played an active role in drawing up uniform international standards and has taken measures to ensure these standards are implemented. For the authors of this initiative, however, these measures do not go far enough. They have therefore launched the Responsible Business Initiative, which aims to introduce new statutory obligations for Swiss businesses.

## The proposal

The initiative requires Swiss companies to examine whether they can comply with internationally recognised human rights and environmental standards when carrying out their business operations. They will not only have to consider their own activities, but also the activities of their subsidiaries, suppliers and business partners. If need be, they will have to take action and submit reports. In addition, Swiss companies will also be liable for damage caused by companies that they control. However, they will not be held liable if they can prove that they complied with their due diligence obligations. Parliament has approved an indirect counter-proposal to the initiative, which also introduces new reporting and due diligence obligations. Any failures to comply would lead to fines being imposed. The counter-proposal will come into effect if the initiative is rejected, unless the counter-proposal itself is rejected in a referendum. Key differences between the initiative and the counter-proposal:

### National Council counter-proposal

- Only applies to very large companies
- Exceptions for companies with particularly high and particularly low risk
- Mandatory due diligence is limited and only in relation to those binding provisions under international law which Switzerland has also ratified. Explicit exclusion of all duties to protect or responsibility for state maladministration
- Liability limited to life, limb and property
- Liability for natural persons (e.g. CEO, members of Board of Directors) excluded
- Liability only for legally controlled subsidiaries
- Exemption from liability via proof of due diligence or via proof that no influence existed
- Plaintiff only receives approval to file suit

### Responsible Business Initiative

- Applies to companies with over 250 employees and SMEs in risk sectors
- Mandatory due diligence in accordance with international standards
- Liability for human rights violations and environmental pollution
- Liability for subsidiaries and for economically controlled companies (e.g. via exclusive purchase agreement)
- Exemption from liability via proof of due diligence

*(comparison produced by the Swiss Coalition on Corporate Justice)*

## Client recommendations

The Swiss debate has been going on since early 2015 and has been discussed and kicked back and forth between the various organs of the Swiss Federal Assembly. Private sector lobbying of parliamentarians has taken place over this period and has mostly been done by the business associations, including by EconomieSuisse and the Swiss Trading and Shipping Association (both against the initiative, but STSA supports the counter-proposal) and positions have hardened on both sides. Typically, we expect to see last minute publicity campaigns by both sides involving business leaders, politicians, academics and journalists. Clients may be asked for campaign contributions by industry associations, if they are a member.

### Further information

STSA Position Paper (English, 2020)

[https://uploads-ssl.webflow.com/5f3bf619a5cafc3d5220627f/5f746b1ab0cb150d1b721456\\_20200923\\_Position%20Statement\\_ENG\\_site.pdf](https://uploads-ssl.webflow.com/5f3bf619a5cafc3d5220627f/5f746b1ab0cb150d1b721456_20200923_Position%20Statement_ENG_site.pdf)

EconomieSuisse Briefing (English, 2016)

<https://www.economiesuisse.ch/en/dossier-politics/loesungen-statt-gerichtsprozesse>