

Newsletter

ESG Update

Child labour risks in the supply chain: Larger companies which offer products or services in relation to which there is a reasonable suspicion that they have been manufactured or provided using child labour must observe newly introduced due diligence obligations. Such companies will have to produce for the first time for the financial year 2023 a report on compliance with due diligence obligations in their supply chain. Providing false information in the compliance report or not reporting at all might be fined under the Swiss Criminal Act with fines up to CHF 100,000.

walderwyss attorneys at law

Obligation to maintain a management system and to introduce a supply chain policy



By Samuel Lieberherr
lic. iur., Attorney at Law, MBA
Managing Associate
Direct phone: +41 58 658 56 44
samuel.lieberherr@walderwyss.com



and Dzevrige Zendeli
lic. iur., LL.M., Attorney at Law
Managing Associate
Direct phone: +41 58 658 51 75
dzevrige.zendeli@walderwyss.com

Companies falling under the new regime must introduce a management system and a supply chain policy. The agreements with suppliers should reflect the supply chain policy of a company.

1. Supply chain monitoring is a legal obligation

Larger Swiss companies are obliged to monitor their supply chain in relation to (i) child labour and (ii) minerals and metals from conflict-affected areas (conflict minerals). These companies have to observe certain due diligence standards and report each year on compliance with such standards. The reporting obligation applies for the first time for the financial year starting in 2023 (meaning the companies have to report for the first time in 2024 for the financial year 2023). In this sense, affected companies must already now pay special attention to their supply chain.

2. Swiss ESG landscape

The provisions regarding due diligence and transparency in relation to child labour and conflict minerals (art. 964j et seq. Swiss Code of Obligations (CO)) form part of newly introduced provisions on ESG (environmental, social and governance) in the CO. Other ESG provisions address transparency on non-financial matters which include environmental matters, in particular CO₂ goals, social issues, employee-related issues, respect for human rights and combating corruption (art. 964a et seq. CO). For commodity companies involved in the extraction of minerals, oil or natural gas or in the harvesting of timber in primary forests,

additional specific transparency obligations apply (art. 964d et seq. CO).

The focus of this newsletter is on child labour in the supply chain only. The legal basis is art. 964j et seq. CO and the corresponding Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labour (Ordinance).

3. Which companies have due diligence and transparency obligations regarding child labour?

Larger companies with seat, head office or principal place of business in Switzerland fall within the scope if they offer products or services where there is a reasonable suspicion that their products or services have been manufactured or provided using child labour.

Exempt from these obligations are SMEs, which means companies that do not exceed two of the following thresholds in two successive financial years (being the same thresholds for an ordinary audit): (i) balance sheet total of CHF 20 Mio, (ii) sales revenue of CHF 40 Mio, (iii) 250 full-time positions on an annual average. Similarly exempt are companies with minor risks for exposure to child work. According to the Ordinance, a minor risk for child labour is assumed if services or products are supplied by companies based in countries that are

classified with a *Basic* risk for child labour by UNICEF in its Children's Rights in the Workplace Index (available at: <https://www.unicef.ch/de/unsere-arbeit/schweiz-liechtenstein/kinderrechte-und-unternehmen>).

Exempted companies neither need to examine if there is a reasonable suspicion of child labour nor do they have to observe the due diligence and reporting obligations on this topic. These exceptions do not apply if a company offers products or services which have obviously been produced or delivered using child labour.

Also exempt from the provisions of art. 964j CO and the Ordinance are companies that adhere to internationally recognized equivalent regulations, such as the ILO-IOE Child Labour Guidance Tool for Business of 15 December 2015.

4. "Reasonable suspicion" of child labour

Child labour is defined in art. 2 of the Ordinance. It includes the worst forms of child labour such as work which is likely to harm the health, safety or morals of children, and includes also other forms of work done if the children are under the age of 15 or if they are required to attend school.

In a first step, a company needs to establish if there is a "reasonable suspicion" of child labour in its supply chain. This is the case if there are concrete and documented indications for child labour. If there is a certain suspicion based on internal or external sources, the company needs to investigate further.

If a company concludes that there is no reasonable suspicion of child labour in its supply chain, this conclusion should be documented by the company (e.g. minutes of the board of directors). In this case, the company has no longer to com-

ply with the due diligence and transparency obligations.

5. Due Diligence Obligations

If there is reasonable suspicion that the supply chain is tainted by child labour, the company must introduce a management system and define therein: (i) its supply chain policy, and (ii) a system by which the supply chain can be traced.

Under the supply chain policy, a company has to identify and assess the risks of harmful impacts in its supply chain. The supply chain policy should mention the instruments and measures taken to assess the supply chain regarding child labour risks. Such instruments and measures include checks on-site of the factory abroad, information from authorities and international organisations, consulting with experts, studying specialist literature and representations from suppliers that they observe international standards on child labour.

A company must take measures to minimise the risks identified. A company must also inform its suppliers and the public about its supply chain policy (e.g., on a specific section of its website). The supply chain policy should also be reflected in the supply agreements with suppliers. This might lead to additional clauses in the supply agreement explicitly representing compliance with international standards on child labour. In addition, a company should ensure that concerns regarding child labour in its supply chain can be reported. If such concerns are raised, a company needs to investigate such concerns and take reasonable measures.

6. Reporting Obligations and related sanctions

The board of directors has to prepare each year a report on compliance with the mentioned due diligence obligations. This report does not need to be approved by the shareholders' meeting (unlike the

report on non-financial matters according to art. 964a et seq. CO). The report can be in English, German, French or Italian and needs to be published online within six months after the end of the financial year. It must remain publicly available for at least ten years. Since there are different audit and publication requirements for the annual reports, it is usually recommendable to prepare a separate report on the compliance of the supply chain.

Infringement of the reporting obligations might lead to fines of up to CHF 100,000 under the Swiss Criminal Act, if a person wilfully provides false information in the report or fails to produce a report. For negligence behaviour, the maximum fine is lowered to CHF 50,000.

Conclusion

Environmental, social and governance (ESG) criteria are becoming increasingly important for companies, institutions and investors. If there is reasonable suspicion of child labour in the supply chain, larger Swiss companies must develop a supply chain policy. As a report on supply chain compliance is due for the first time in 2024 covering the financial year 2023, now is certainly the time put ESG topics on the agenda.

Please also refer to our related newsletters:

ESG Update December 2022:

[Climate reporting in Switzerland](#)

ESG Update July 2023:

[The Rise of Climate Change Litigation – What Risks for Swiss Companies?](#)

[Swiss corporate and D&O liability in a changing regulatory environment](#)

Walder Wyss Newsletters provide comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the infor-