# New Swiss Non-Financial Reporting Obligations apply as of Business Year 2023

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**Key takeaways**

- **Starting with business year 2023, companies of public interest have to report on environmental (in particular climate), social, and labor matters, as well as on human rights and anti-corruption.**
- **The recommendations of the Task Force on Climate-related Financial Disclosure (TCFD) provide a safe harbor for the reporting on climate matters.**
- **At the same time, new transparency and due diligence obligations in the fields of conflict minerals and child labor have come into force (cf. separate Legal Update).**

**Introduction**

Following the rejection of the so-called "Responsible Business Initiative" and inspired by the European Union's Directive 2014/95/EU, Switzerland enacted new provisions on non-financial reporting. Companies in scope must annually report on environmental (in particular climate), social, and labor matters, as well as on human rights and anti-corruption. The new provisions, set forth in article 964a et seqq. Swiss Code of Obligations (CO), must be followed starting with the business year 2023.

**Scope of Application**

The Swiss non-financial reporting obligations apply to companies meeting the following requirements:

- Companies must qualify as companies of public interest. This is the case if their shares are listed on a stock exchange, if they have bonds outstanding, or if they require a license, recognition, authorization or registration from the Swiss Financial Market Supervisory Authority FINMA (such as banks or insurers).

- Additionally, companies must (together with all Swiss or foreign companies controlled by them) in two consecutive business years (i) have an annual average of at least 500 full-time positions (FTE) and (ii) exceed at least one of the following two thresholds: balance sheet total of CHF 20 million or revenues of CHF 40 million.

Companies meeting these requirements are only exempt if they are either controlled by another entity to which the Swiss non-financial reporting obligations apply, or that is required to prepare an equivalent report under foreign law, e.g., based on Directive 2014/95/EU.

**Reporting**

Companies in scope have to report on environmental (in particular climate, such as carbon reduction targets), social, and labor matters, as well as human rights and anti-corruption (in the following: "ESG matters"). These new obligations aim at providing stakeholders with the information necessary for better understanding both the development and the performance of a company's business activities as well as the impact of these activities on ESG matters.

In the report, companies have to outline their business model and the concepts pursued as well as the due diligence applied with regard to the ESG matters. Additionally, the report must state the measures taken in connection with the concepts and their effectiveness. Further, companies must report on significant risks (and their handling) to the company's business as well as caused by the company's business activities in connection with ESG matters (double materiality standard). Finally, the report must provide the KPIs used that are related to ESG matters.

Companies may decide not to pursue a concept on one or several ESG matters and thus not to report as outlined above (so-called "opting out"). In the sense of a "comply-or-explain" approach, however, such opting-out must be explained in the report. Pursuant to the available explanatory report of the Swiss Federal Department of Justice, an opting out may, in particular, be justified if the non-financial report would not provide any meaningful information to stakeholders, for example, because the company in scope has no or only very low risks due to its business activities.

If a company produces a report based on equivalent regulations, such as Directive 2014/95/EU, it does not need to provide a separate report based on the Swiss provisions, provided that all Swiss requirements are met.

**Climate Reporting**

In principle, the implementation of the mentioned reporting obligations is up to the companies, and no formal guidance as to what is considered sufficient within the meaning of the law is provided. The exception to this is climate reporting.

In 2017, the international expert commission "Task Force on Climate-related Financial Disclosures" (TCFD), created by the Financial Stability Board, released climate-related financial disclosure recommendations for a more uniform climate reporting of companies. These recommendations are recognized internationally, and, in 2021, Switzerland officially pledged to implement them. As a result, on 23 November 2022, the Federal Council adopted the Ordinance on Climate Disclosures, which will enter into force on 1 January 2024.

Pursuant to the new ordinance, companies automatically comply with the Swiss non-financial reporting requirements in the field of climate if their report is based on the "Recommendations of the Task Force on Climate-related Financial Disclosure", version of June 2017, as well as the annex "Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures", version of October 2021, and covers the topics governance, strategy, risk management, as well as metrics and targets.

In the spirit of a liberal regulation, companies may alternatively choose not to follow the mentioned recommendations, but instead meet the non-financial reporting requirements regarding climate matters in other ways. In this case, however, they have no legal certainty as to whether their report is compliant with the requirements of the Swiss non-financial reporting obligations. Thus, it is expected that most companies will adhere to the TCFD's recommendations to achieve easy comparability with their peers.

**Formalities**

Companies in scope whose business year corresponds with the calendar year must present their first Swiss non-financial report in 2024 (concerning the business year 2023). The report is to be drawn up in a Swiss national language or in English. The responsibility for the report lies with the supreme governing or administrative body, namely, in Swiss stock corporations, with the board of directors.

As with the financial report, the non-financial report must be approved by the body responsible for approving the annual report, i.e., in Swiss stock corporations, by the shareholders' assembly. However, no audit is required with regard to the Swiss non-financial report. Following approval, the report must be published electronically and remain publicly accessible for at least ten years.

**Criminal Charges**

Individuals may be criminally sanctioned with a fine of up to CHF 100,000 for a deliberate (respectively with CHF 50,000 for a negligent) breach of the duty to prepare a report containing true information and the duties to make and retain the report pursuant to the Swiss non-financial reporting obligations.

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No legal or tax advice

This legal update provides a high-level overview and does not claim to be comprehensive. It does not represent legal or tax advice. If you have any questions relating to this legal update or would like to have advice concerning your particular circumstances, please get in touch with your contact at Pestalozzi Attorneys at Law Ltd. or one of the contact persons mentioned in this Legal Update.

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