



The initiative text with explanations

English is not an official language of the Swiss Confederation. In case of doubt, please refer to any of the official German, French or Italian versions of the text. This translation is provided for information purposes only.

The Federal Constitution will be amended as follows:

Art. 101a

Responsibility of business

1 |

The Confederation shall take measures to strengthen respect for human rights and the environment through business.

This is the general principle of the initiative. As a result, the government can take measures in all legal fields additional to those changes required by the initiative text. The government is not only competent to take the relevant measures, but is hereby also required to do so.

2 |

The law shall regulate the obligations of companies that have their **registered office, central administration, or principal place of business in Switzerland** according to the following principles:

This provision regulates the scope of the initiative and defines which „Swiss companies“ are caught. It is primarily based on international contract law according to the Lugano Convention.

- *The registered office is derived from the company statutes.*
- *The central administration is located where the decision-taking and management of the business takes place. This differs particularly in the case of domiciliary companies („shell companies“) from the registered office.*
- *The principal place of business is where a recognizable, real business focus exists or where important staff and material resources can be found. It is therefore possible that a company may have multiple principal places of business.*

a. Companies must respect **internationally recognized human rights** and **international environmental standards**, also abroad; they must ensure that human rights and environmental standards are **also respected by companies under their control**. Whether a company controls another is to be determined according to the factual circumstances. **Control may also result through the exercise of power in a business relationship.**

The constitutional provision is aimed primarily at the overseas activities of Swiss companies. This is why the proposed provision has been placed directly after Art. 101 of the Swiss Federal Constitution (Foreign Economic Policy).

Human rights protect fundamental aspects of the human person and his/her dignity. According to binding international law, the state must also protect its citizens from damage by private parties. This includes companies.

According to the UN Guiding Principles on Business and Human Rights (Principle 12), internationally recognized human rights include a minimum of the Universal Declaration of Human Rights together with its most important implementing instruments:

- *the International Covenant on Civil and Political Rights (UN Covenant II)*
- *the International Covenant on Economic, Social and Cultural Rights (UN Covenant I)*
- *as well as the eight core conventions from the International Labour Organization (ILO).*

International environmental standards refer to norms that have been concluded outside legislative processes at the national level, such as International Law (e.g. the Montreal Protocol for the protection of the ozone layer), international organizations (e.g. emissions limits set by the World Health Organization WHO) as well as non-governmental standards (e.g. ISO standards). It will be for the Swiss legislator to determine what counts as an international environmental standard.

Controlled companies are for example subsidiaries of companies, as well as constellations where *de facto* control exists, such as joint ventures, multiple-delivery contracts, distribution agreements or subcontracting contracts. It will be for the court to determine for each claim whether and why a relationship of control exists.



b. Companies are required to carry out **appropriate due diligence**. This means in particular that they must: identify **real and potential impacts on internationally recognized human rights and the environment**; take **appropriate measures to prevent the violation of internationally recognized human rights and international environmental standards**, cease existing violations, and **account for the actions taken**. These duties apply to controlled companies as well as to all business relationships. **The scope of the due diligence to be carried out depends on the risks to the environment and human rights. In the process of regulating mandatory due diligence, the legislator is to take into account the needs of small and medium-sized companies that have limited risks of this kind.**

*The introduction of **mandatory due diligence** is the heart of the Responsible Business Initiative. The human rights due diligence is based on the [UN Guiding Principles for Business and Human Rights](#) and the [OECD Guidelines for Multinational Enterprises](#) in the following three steps: risks must be identified, measures taken, and those risks and the measures must be reported on.*

*The **human rights due diligence** is risk-based (see UN Guiding Principle 17 (b)) and should extend to all negative human rights impacts that a company causes through its own activities, to which it can contribute, or with which, through its business activities, products, services of business relationships, it may be linked (see UN Guiding Principle 17 (a)).*

*In order to **prevent, mitigate or cease** negative human rights impacts, companies should integrate the findings from their due diligence exercises into all business areas and practices, as well as take the relevant measures. Potential impacts should be prevented or mitigated through the effective integration of the findings throughout the company. Those impacts that have already occurred are to be remedied (see UN Guiding Principle 19/ Commentary paragraph 2 together with Guiding Principle 22).*

Companies should publicly report on how they have responded to the human rights impacts identified (see UN Guiding Principle 21).

*A company's size alone is not the determining factor for its risk profile. In practice, **small and medium-sized companies** have less human rights risks, particularly when they are only nationally active. For these SMEs, the legislator should define a considerably simplified procedure. There will however be no general exemption from the duty to carry out due diligence, because there are some SMEs that carry particularly great risks (e.g. diamond dealers).*

c. **Companies are also liable for damage caused by companies under their control** where they have, in the course of business, committed violations of internationally recognized human rights or international environmental standards. **They are not liable under this provision however if they can prove that they took all due care** per paragraph b to avoid the loss or damage, or that the damage would have occurred even if all due care had been taken.

Whoever controls a company should use this control to prevent violations of human rights and of the environment. Whoever gains an economic benefit from another should also carry his share of the associated risks. If a Swiss company controls an economic entity abroad, Swiss law has the task to protect people from human rights and environmental damage abroad. The initiative text has been modelled on the provision of [principal liability](#) in the Swiss Code of Obligations (Art. 55 CO) being the closest provision to the constellations at issue.

*The **relativization of the liability** is also based on the principal liability provision: Companies are not liable if they can prove they applied all the requisite care. This includes a reversal of the burden of proof: rather than the injured party needing to bring the (virtually impossible to obtain) proof of guilt, the controlled company instead needs to demonstrate its innocence – in other words, it has to demonstrate that it carried out appropriate due diligence (so-called due diligence defence).*

This also brings greater legal certainty for businesses: so long as a company can demonstrate that it took all the measures necessary to prevent the damage from occurring, it has nothing to fear.

d. The provisions based on the principles of paragraphs a – c **apply irrespective of the law applicable under private international law.**

For international liability cases, Swiss courts often apply foreign law, specifically the law of the place where the damage occurred. This is why this provision requires the legislator to design the implementation law as a overriding mandatory provision. An overriding mandatory provision is a substantive rule of Swiss law which is applied in international cases regardless of the law that would otherwise be applicable under international private law. Generally overriding mandatory provisions concern standards of fundamental importance to Switzerland and the legal community, and are particularly designed to protect human dignity. What sounds complicated means simply that paragraph (d) ensures that the provisions of the initiative do in reality apply.