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Switzerland: Law & Practice
and
Switzerland: Trends & Developments

Beat Kühni and Fabiano Menghini
Lenz & Staehelin

SWITZERLAND

Law and Practice

Contributed by:
Beat Kühni and Fabiano Menghini
Lenz & Staehelin

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Lenz & Staehelin is one of the largest law firms in Switzerland, with over 250 lawyers and offices in Zurich, Geneva and Lausanne. The firm is internationally oriented, offering a comprehensive range of services and handling all aspects of international and Swiss law.

Authors

Beat Kühni became a partner at Lenz & Staehelin in 2003 and has led the real estate practice group in Zurich for over 15 years. He is an expert in construction and real estate law, particularly in portfolio transactions, ESG and climate change matters, as well as in development projects. He also advises Swiss and foreign investors on investment transactions, mainly on the acquisition, financing and sale of real estate and construction projects. In addition to his expertise in real estate-specific law, Beat Kühni has many years of experience in corporate and M&A, banking and financial market law, as well as in contract and commercial law.

Fabiano Menghini co-heads Lenz & Staehelin's real estate practice group in Zurich together with Beat Kühni. He advises on real estate transactions (asset deals, share deals, sale-and-rent-back transactions, asset transfers, development projects, etc) as well as on all other real estate-specific legal matters (including total contractor/general contractor agreements, planning agreements, project development agreements, tenancy and lease law, environmental law, ESG and climate-change related matters, Lex Koller, Lex Weber and real estate financing).

Lenz & Staehelin

Brandschenkestrasse 24
CH-8027
Zurich
Switzerland

Tel: +41 58 450 80 00
Fax: +41 58 450 80 01
Email: zurich@lenzstaehelin.com
Web: www.lenzstaehelin.com

1. Multilateral and Regional Regimes

1.1 Multilateral Climate Change Legal Regime

Main Multilateral Climate Change Regime

Switzerland has ratified the following major multilateral climate change legal regimes.

The United Nations Framework Convention on Climate Change (UNFCCC)

Switzerland ratified the UNFCCC in 1993. At a later stage, Switzerland also ratified the Kyoto Protocol in 2003 and the Paris Agreement in 2017 (see below).

As a member of the UNFCCC, Switzerland is closely involved in international negotiations on climate funding. Specifically, Switzerland plays an active role within the context of the Global Environment Facility (GEF) and the Green Climate Fund (GCF), to which Switzerland contributes a fair amount.

Additionally, Switzerland is involved in three other climate funds linked to the UNFCC:

- the Least Developed Countries Fund (LDCF), aimed at the specific needs of the least developed countries;
- the Special Climate Change Fund (SCCF), providing additional funds for the climate protection measures set out in the UNFCC in emerging countries; and
- the Adaptation Fund (AF), which was launched in 2001 as a finance mechanism under the Kyoto Protocol to finance projects and programmes to help developing countries adapt to climate change.

Switzerland is part of the Environmental Integrity Group (EIG) comprised of Georgia, Liechtenstein, Monaco, Mexico, South Korea and Switzerland from the UNFCCC negotiations. The EIG strives to play a constructive role and tries to help find common ground between countries with different interests.

The Kyoto Protocol

Under the Kyoto Protocol, industrialised countries committed to reducing their greenhouse gas emissions by an average of 5.2% compared to 1990 levels in a first period ranging from 2008 to 2012, generally known as the first commitment period. Switzerland committed to a reduction of 8%, the same amount as the European Union (EU). Switzerland met its emissions reduction requirements under the Kyoto Protocol in the first commitment period.

Switzerland also agreed to a second commitment period under the Kyoto Protocol (Doha Amendment). Specifically, Switzerland committed to reduce its emissions by 20% compared to 1990 levels by 2020. After 2020, the Kyoto Protocol was replaced by the Paris Agreement.

The Paris Agreement

Under the Paris Agreement, Switzerland has committed to reduce its greenhouse gas emissions by 50% in 2030 compared to 1990 levels (Nationally Determined Contribution, NDC) and strives to cut greenhouse gas emissions to net zero by 2050.

Switzerland strives to reach the NDC in part by funding climate protection projects abroad. To this end, Switzerland is, among other initiatives, concluding a number of treaties that set out the co-operation framework and state the requirements for recognition of the international transfer of emission reductions by the treaty parties.

Other Commitments to Mitigate Climate Change

Switzerland takes part in the UNECE Convention on Long-range Transboundary Air Pollution Transport and is a party of the Gothenburg Protocol. As part of the commitment under the Gothenburg Protocol, Switzerland reports on an annual basis on national emissions data related to black carbon that is part of fine particulate air pollution and that contributes to climate change.

Switzerland also continues its participation in the Climate and Clean Air Coalition (CCAC) that promotes action on Short-Lived Climate Forcers. Short-lived climate forcers are substances such as methane, ozone and aerosols that remain in the atmosphere for a much shorter period of time than carbon dioxide (CO_2).

1.2 Regional Climate Change Legal Regimes

Apart from certain bilateral agreements and treaties – eg, in the framework of the Emission Trading System (ETS) – Switzerland does not participate in regional climate change legal regimes. In particular, as a non-EU member Switzerland does not take part in the climate change initiatives of the EU (such as the European Green Deal).

2. National Policy and Legal Regime (Overview)

2.1 National Climate Change Policy

To achieve the mitigation goals and commitments set out under the Paris Agreement and the net-zero target, Switzerland has adopted a long-term climate strategy towards 2050. This strategy sets key goals to be met by 2050 in the following sectors:

- buildings – building stock should no longer generate greenhouse gases;
- industry – greenhouse gas emissions from the industrial sector should be reduced by at least 90% compared to 1990 levels;
- transport – land transport should, with few exceptions, no longer generate greenhouse gas emissions (emissions created by air transport should be offset by other measures);
- agriculture – greenhouse gas emissions from domestic agricultural production should be reduced by at least 40% compared to 1990; and
- financial markets – Switzerland's financial flows should follow a pathway towards low greenhouse gas emissions and climate-resilient development.

The remaining amount of (non-avoidable) CO_2 emissions is meant to be reduced by means of carbon capture and storage and by using negative emission technologies (ie, permanently removing CO_2 from the atmosphere). At this stage, however, the relevant legal framework for the achievement of these mitigation goals has not been enacted as a full revision of the Federal Act on the Reduction of CO_2 Emission (the "CO_2 Act") was rejected in a popular vote in 2021 – see **3. National Policy and Legal Regime (Mitigation)**.

Regarding adaption to climate change, Switzerland has already implemented most of the requirements under the Paris Agreement. Based on the existing CO_2 Act, the Swiss Federal Council endorsed a two-part adaptation strategy for Switzerland – see **4. National Policy and Legal Regime (Adaptation)**.

Climate finance is an essential part of Switzerland's international climate policy and Switzer-

land contributes an appropriate share to the Global Environment Facility (GEF) and to the Green Climate Fund (GCF). Switzerland is also a board member of both organisations. In addition to public financing, in 2019 Switzerland developed a strategy to mobilise private finances for climate protection activities in developing countries.

Concerning emissions trading and compensation, the CO_2 Act requires some operators to participate in the ETS, especially aircraft operators and greenhouse gas-intensive companies – see **3. National Policy and Legal Regime (Mitigation)**.

Moreover, Switzerland has concluded a number of bilateral treaties on emission reductions and carbon storage abroad, as the Paris Agreement foresees that emissions reduction can be achieved by funding climate protection projects abroad. These bilateral agreements serve as a legal basis for commercial contracts between buyers and sellers of emission reductions.

2.2 National Climate Change Legal Regime

Constitutional Framework

Switzerland's climate policy is based on Article 74 (environmental protection) and Article 89 (energy policy) of the Swiss Constitution. Article 74 gives the Confederation the competence to legislate on the protection of the population and its environment against damage or nuisance. Article 89 paragraph 2 states that the Confederation shall establish principles on the use of local and renewable energy sources and on the economic and efficient use of energy. Neither Article 74 nor Article 89 provide a specific framework for the implementation of climate change regulation.

However, the aforementioned articles of the Swiss Constitution serve to grant the Swiss legislature (Parliament) the competence to enact laws to protect the population and environment against the consequences of climate change. The Swiss Parliament has done so by implementing the CO_2 Act that, together with the Ordinance on the Reduction of CO_2 Emissions (the "CO_2 Ordinance"), forms the legal basis of Switzerland's national climate policy. Furthermore, the Swiss federal government wants to introduce a Climate and Innovation Act that functions as a framework for the CO2 Act and other acts and ordinances in Switzerland's extensive legal climate change regime.

The CO_2 Act and CO_2 Ordinance

Current regulation

The CO_2 Act and the CO_2 Ordinance implement Switzerland's international climate obligations under the Paris Agreement into national law and define objectives, instruments, measures and general rules for the implementation of climate policy.

The overarching aim of the CO_2 Act is the reduction of greenhouse gas emissions that are attributable to the use of fossil fuels as energy sources, and to limit the global rise in temperatures to less than 2 degrees Celsius (Article 1). It states that domestic greenhouse gas emissions must be reduced by 20% by 2020 and by a further 1.5% annually until 2024 (compared with 1990 levels; Article 3).

Rejected revision

A complete revision of the CO_2 Act was meant to enter into force in 2022. The revised CO_2 Act would have strengthened Switzerland's climate protection measures and included various additional measures to fight climate change, such as:

- creation of a climate fund to support the installation of climate-friendly heating systems in buildings, infrastructure investments, and help for Swiss companies to quickly bring climate-friendly technologies to the market;
- a levy on air traffic tickets;
- an increase of the CO_2 levy; and
- prohibition of emission of CO_2 from fossil fuels in new buildings.

However, in a referendum held in June 2021, Swiss voters narrowly rejected the revised CO_2 Act.

Future plans for revision

As some of the measures of the current CO_2 Act were limited to 2022, parliament enacted a prolongation of the currently existing measures through a minor revision of the CO_2 Act and its CO_2 Ordinance following the rejection of the revised CO_2 Act in June 2021. This minor revision is meant to bridge the gap until the adaption of a revised CO_2 Act in 2025, which will aim at culling greenhouse gas emissions by 50% until 2030.

Further legislation

While the CO_2 Act provides that the reduction targets shall be achieved, as a first priority, through measures set forth in the CO_2 Act, additional measures in the fields of environment and energy, agriculture, forestry and timber, road traffic and taxation of mineral oil shall contribute to achieving the reduction target as well (Article 4). Therefore, the following acts will be important co-contributors to the Swiss climate change regime:

- the Environmental Protection Act;
- the Energy Act;
- the Federal Act on Agriculture;
- the Spatial Planning Act;
- the Forest Act;
- the Road Traffic Act;
- the Heavy Vehicle Charge Act;
- the Mineral Oil Tax Act; and
- the Ordinance on the Avoidance and Management of Waste.

The Climate and Innovation Act

Furthermore, Swiss legislators have passed the Federal Act on the Objectives in Climate Protection, Innovation and the Strengthening of Energy Security (the "Climate and Innovation Act"). The Act aims to serve as a framework for the abovementioned legislation and aims to fulfil the commitments made under the Paris Agreement. For this purpose, it adopts three main strategies:

- reduction of greenhouse gas emissions and application of negative emission technologies;
- adaptation to and protection from the impacts of climate change; and
- directing financial resource flows towards low-emission development that is resilient to climate change.

The main objective of the Act is to achieve the net-zero target by 2050. The Federal Council is to ensure that, compared to 1990, greenhouse gas emissions are reduced in accordance with the following interim targets:

- on average over the years 2031–2040 – by at least 64%;
- by the year 2040 – by at least 75%; and
- on average over the years 2041–2050 – by at least 89%.

After 2050, the amount of CO2 removed and stored through the application of negative emis-

sion technologies must exceed the remaining greenhouse gas emissions.

The Climate and Innovation Act was subject to a referendum and will be voted on by the Swiss people on 18 June 2023.

2.3 Bilateral Co-operation

Switzerland is looking into co-operation pursuant to Article 6.2 of the Paris Agreement with various countries and aims to achieve its climate targets through international co-operation. To date, Switzerland has concluded different agreements with Peru, Ghana, Senegal, Georgia, Vanuatu, Dominica, Thailand, Ukraine, Morocco, Malawi, Uruguay and Chile.

Switzerland is notably engaged in the promotion of climate smart agriculture practices for sustainable rice cultivation in Ghana, as well as in the operation of e-buses on privately owned, scheduled public bus routes in the Bangkok Metropolitan area by Energy Absolute. Furthermore, Switzerland has signed a declaration of intent with Iceland and a memorandum of understanding with the Netherlands regarding carbon capture and storage (CCS) and carbon dioxide removal (CDR).

2.4 Key Policy/Regulatory Authorities

The key regulatory authority concerning climate and climate change is the Federal Office for the Environment (FOEN), which is a sub-department of the Federal Department of the Environment, Transport, Energy and Communications (DETEC). The Climate Division of the FOEN is responsible for:

- fulfilling international climate policy obligations;
- federal legislation (the CO_2 Act and CO_2 Ordinance);
- measures to reduce greenhouse gases;
- strategies and measures in the field of adaptation to climate change;
- reviewing the performance of climate policy; and
- advising the government and the public on the causes and impact of climate change.

The Climate Division is further subdivided into four sections:

- the Climate Reporting and Adaption Section, which deals with reporting to the UNFCCC and the EEA about emissions developments in Switzerland and the development and implementation of the Swiss strategy for adaptation to climate change;
- the Climate Policy Section, which deals with the development of climate policy strategies and goals for Switzerland and the preparation of climate policy matters for the Federal Council and parliament;
- the CO_2 Levy and Emissions Trading Section, which deals with the implementation and redistribution of the CO_2 levy and the implementation of emissions trading; and
- the CO_2 Compensation Section, which deals with the approval and monitoring of climate protection projects and programmes in Switzerland and abroad.

Additionally, the Swiss Federal Office of Energy and the Swiss Agency for Development and Co-operation are important for certain aspects of climate change policy development.

3. National Policy and Legal Regime (Mitigation)

3.1 Policy/Regulatory Instruments and Spheres of Government/Sectors

The CO_2 Act has the primary aim of reducing the emission of greenhouse gases with a reduction target of 20% by 2020, and by a further 1.5% annually until 2024 (compared to 1990). To achieve this goal, the CO_2 Act provides for the following core measures, which are further specified in the CO_2 Ordinance.

Technical Measures (Articles 9–13, CO_2 Act)

The CO_2 Act implements technical measures for reducing CO_2 emissions with regard to:

- buildings; and
- passenger cars, vans and light articulated vehicles.

Concerning buildings, the CO_2 Act states that the cantons are responsible for implementing rules to mitigate CO_2 emissions from buildings that are heated with fossil fuels (Article 9), but does not specify these measures and leaves room for their implementation.

As for passenger cars, vans and light articulated vehicles, the CO_2 Act stipulates that the importer or manufacturer of these vehicles must reduce the average CO_2 emission of the vehicles it imports into or manufactures in Switzerland (Article 10). To ensure this, an individual target is calculated for each importer or manufacturer of vehicles. If the average CO_2 emissions of an importer's or manufacturer's passenger car fleet exceed this individual target, the importer or manufacturer in question must pay the federal government a legally defined amount as a penalty (Article 13).

The Emissions Trading System (ETS, Articles 15–21, CO_2 Act)

The CO_2 Act states that operators of installations which belong to a specific category and which cause high greenhouse gas emissions (eg, combustion of fossil fuels, production of aluminium) and operators of aircraft (Article 16–16a) are required to participate in the ETS. Furthermore, certain operators of installations that cause high or moderate greenhouse gases can participate in the ETS on a voluntary basis.

The ETS in Switzerland works in such a way that, each year, a maximum amount of newly available emission allowances are specified in the ETS (Article 18). Some of the allowances are then allocated free of charge, while others are auctioned (Article 19). Each year, the participants have to cover their actual emissions with an adequate amount of emissions allowances. Therefore, the participants in the ETS are able to use their allowances for their own emissions or to sell them to other ETS participants. With these mechanisms, emissions should be reduced where doing so is most cost-efficient.

Compensation for Motor Fuels (Articles 26–28, CO_2 Act)

The CO_2 Act regulates that any person who distributes motor fuels for consumption must compensate for part of the CO_2 emissions that are attributable to the use of motor fuels as an energy source. Failure to compensate for the CO_2 emissions leads to payment of a penalty.

The CO_2 Levy (Articles 29–38, CO_2 Act)

The CO_2 Act stipulates that the federal government shall impose a CO_2 levy on the production, extraction and importation of thermal fuels. The revenues generated from the CO_2 levy shall be used to reduce CO_2 emissions from buildings, and for the promotion of technologies for

reducing greenhouse gases (technology fund). Any excess shall be redistributed to the general public and the economy.

4. National Policy and Legal Regime (Adaptation)

4.1 Policy/Regulatory Instruments and Spheres of Government/Sectors

The Adaptation Strategy

Following mitigation, adaptation to climate change is the second pillar of Swiss climate policy. Article 8 of the CO_2 Act states that “the Confederation co-ordinates measures to avoid or deal with the harm to persons or damage to property of substantial value that may be caused by the increased concentration of greenhouse gases in the atmosphere”.

In compliance with Article 8 of the CO_2 Act, the Federal Council created a strategy for the adaptation to climate change in Switzerland in 2012. The adaptation strategy is based on the most important challenges arising directly from the effects of climate change in Switzerland (eg, greater heat stress, increasing summer droughts, increased risk of flooding, a rising snowline, and changes in habitats, species composition and landscapes).

Implementation of the Adaptation Strategy

To implement the adaptation strategy, the Federal Council adopted a first action plan for the years 2014–19, while also instructing the Federal Department of Environment, Energy and Communications to carry out a biennial report on the implementation of the measures. A second action plan for the years 2020–25 was then elaborated on and adopted by the Federal Council.

The action plan for 2020–25 is an extensive, non-legal strategy paper containing 75 measures at the federal level in the following areas:

- water management (eg, lower flood risk due to lake regulations);
- natural hazards management (eg, conducting systematic hazard analyses and risk assessments that consider the impacts of climate change);
- soil conservation (eg, preparation of a report on carbon sequestration in the soils of Switzerland);
- agriculture (eg, strategy on the gentle use of soil and water);
- forestry (eg, reduction of forest fire risk through forest management measures);
- energy (eg, provision of information and monitoring of hydropower utilisation);
- housing (eg, research about heat stress in buildings);
- tourism (eg, supply development and diversification in Swiss tourism);
- biodiversity management (eg, upgrading open spaces in residential areas and agglomerations);
- health (eg, monitoring of potentially disease-transmitting alien mosquito species); and
- spatial development (eg, promotion of innovative projects and further development of policies and strategies to counteract heat).

Since the measures concern a wide variety of already regulated areas, the following federal offices (co-ordinated by the Interdepartmental Climate Committee) have contributed to the strategy and related measures:

- the Federal Office for the Environment;
- the Federal Office for Civil Protection;
- the Federal Office of Public Health;

- the Federal Office for Food Safety and Veterinary Affairs;
- the Federal Office for Agriculture;
- the Federal Office for Spatial Development;
- the Federal Office of Energy;
- the Federal Office of Meteorology and Climatology (MeteoSwiss);
- the State Secretariat for Economic Affairs (SECO);
- the Federal Office of Housing (BWO);
- the Federal Roads Office;
- the Federal Finance Administration; and
- the Federal Office for National Economic Supply (FONES).

Furthermore, to strengthen the federal collaboration by providing a knowledge hub for climate change adaptation, the National Centre for Climate Services (NCCS) was established in November 2015. The NCCS provides information and data on the past, present and future climate and its consequences for the environment, economy and society.

5. Responses to International Developments

5.1 Carbon Markets

According to Article 6 of the Paris Agreement, countries may count reductions achieved abroad towards their emission reduction commitments. The emission reductions achieved in this way must promote sustainable development in the host country and may not already be claimed by another country.

The reduction target for 2020/2021 was achieved almost exclusively through domestic measures. However, companies that are exempt from the CO_2 levy may count a limited amount of foreign certificates towards their reduction obligation. These are issued in accordance with the international procedure set out in the Kyoto Protocol for additional emission reductions that can be proven to have been achieved through climate protection projects in developing countries (Clean Development Mechanisms, or CDM). In Switzerland, these certificates must also meet the quality requirements of Annex 2 of the CO_2 Ordinance.

The reduction target of 50% by 2030 compared to 1990 shall be achieved through compensation abroad.

5.2 European Union Carbon Border Adjustment Mechanism (CBAM)

In summer 2021, the European Commission presented the “Fit for 55” legislative package. One of the proposals therein is the Carbon Border Adjustment Mechanism (CBAM) that will introduce a carbon price on certain products imported into the EU. The new law mostly targets countries with lower environmental thresholds and will enter into application via a transitional phase on 1 October 2023, with the first reporting period ending on 31 January 2024.

Switzerland has been levying an incentive tax on fuels since 2008 and has linked its ETS to the EU’s system since 2020. Due to this, exports from Switzerland are exempted from the CBAM. In this regard, the CBAM will therefore have little impact on Swiss companies doing business in the EU.

Switzerland is following developments within the EU closely, and a first exchange with the EU Commission for implementing an adjustment mechanism at the border has taken place. According to some opinion leaders, Switzerland should introduce a similar tax as that of the EU, to prevent products from countries with lower

environmental thresholds from entering the EU after transiting through Switzerland. As discussions on the implementation of the CBAM are ongoing, it cannot yet be assessed if and to what extent the CBAM will specifically affect Swiss entities and the transport of goods through Switzerland.

6. Liability for Climate Change and ESG Reporting

6.1 Task Force on Climate-Related Financial Disclosures (TCFD)

Since the establishment of the Task Force on Climate-Related Financial Disclosures (TCFD) by the Financial Stability Board (of which Switzerland is a member) at the end of 2015, the TCFD has heavily influenced Swiss policy and regulatory positions on climate change reporting.

By the end of 2020, the Federal Council had already presented proposals on how to strengthen Switzerland's role as a global leader in sustainable financial services. In this context, the Federal Council called on Swiss companies from all sectors of the economy to implement the TCFD recommendations on a voluntary basis. At the same time, it was decided that an ordinance should be implemented to make the TCFD recommendations binding. On 12 January 2021, Switzerland opted to become an official supporter of the TCFD.

Banks and Insurances

In May 2021, the Swiss financial market regulator (FINMA) amended its "Disclosure – banks" and "Disclosure – insurers" circulars. The amendment requires large banks and insurance companies under FINMA's supervision to describe the major climate-related financial risks and their impact on the business strategy, business model and financial planning. In addition, they must disclose the process for identifying, assessing and managing climate-related financial risks as well as quantitative information (including a description of the applied methodology) on their climate-related financial risks. The new requirements were based on the TCFD recommendations.

New Climate Reporting Obligations

Moreover, the Swiss Federal Council has launched the Ordinance on Climate Reporting for large, Swiss listed companies. The Ordinance specifies climate-related reporting obligations, which are part of more general reporting obligations on non-financial matters. The Ordinance will enter into force on 1 January 2024, and clarifies that companies required to report on non-financial matters will be deemed to have fulfilled their obligations with respect to climate reporting if they follow the recommendations of the TCFD for large Swiss companies.

6.2 Directors' Climate Change Liability

As a general matter, potential liability of directors for Corporate Climate Responsibility (CCR) has received less attention in Switzerland than in common law jurisdictions where scholars intensively debate directors' responsibility and liability in connection with climate change and climate risks.

General Liability Scheme

According to the director's liability scheme set forth in Article 754 of the Swiss Code of Obligation (CO), directors can be held liable for damages suffered by the company and/or by the shareholders if a number of requirements are met, including, in particular, that a director must have breached their duty of care and that such breach led to a damage suffered by the company or by the shareholders.

The requirement considered to be the most difficult to scrutinise and to fulfil is the breach of a board duty. According to Article 717 of the CO, the board of directors is required to safeguard the interests of the company in good faith. The CO does not, however, stipulate an explicit obligation of the board of directors to pursue interests other than those of its shareholders.

Nevertheless, among Swiss scholars the CCR is often discussed in the context of whether the sole objective of a company is to create value for its shareholders (so-called shareholder primacy) or whether the board mandate includes a duty to safeguard the interests of other stakeholders (the so-called stakeholder approach).

Some Swiss scholars assume that external environmental effects are regulated exclusively by the framework of environmental legislation rather than by extending the duties of the board of directors to include a duty to protect environmental interests. Following that school of thought, the board of directors should not accept costs in order to pursue stakeholder interests that are not offset by a corresponding increase in the value of the company.

Conversely, other scholars maintain that a company must pursue three goals simultaneously in the sense of a triple bottom line:

- profit optimisation in the interests of investors;
- socially responsible behaviour in the interests of employees and civil society; and
- resource-conserving action to protect the environment.

Corporate Governance and Duty of Care

With regard to this controversy in the legal doctrine, the latest version of the "Swiss Code of Best Practice for Corporate Governance" provides some clarity, as this version does not solely focus on shareholders' interests but on the "entirety of principles geared to the sustainable interests of the company."

According to the CO, the board of directors is obliged to define the overall strategy and to perform the overall management. This general definition of board duties and obligations leads, for example, to the specific duty to implement and monitor an internal control system and a functioning risk management system designed to ensure systematic handling of internal and external corporate risks (in particular, liquidity, credit, market, operational and reputational risks). Further, the board of directors is obliged to set up a compliance system, which ensures compliance with legal requirements regarding the protection of human rights and the environment.

When pursuing its duties and tasks, the board of directors further has a duty of care. According to some scholars, the duty of care includes a duty to implement the principles of contemporary corporate governance adapted to the specific circumstances, and corporate governance recommendations are to be consulted as interpretative aids. In the context of CCR, the TCFD recommendations and the OECD Guidelines would be particularly appropriate for specifying due diligence obligations.

In view of the aforementioned duty of care, it seems increasingly more important for the board of directors to take long-term developments such as climate change into account and to promote a sustainable long-term corporate strategy that is fully aligned with all relevant standards and regulations.

Outlook

The current law provides for a liability scheme that could lead to the liability of the board of directors in connection with the realisation of climate risks. Irrespective of the academic dispute between shareholder primacy and the stakeholder approach, climate risks increasingly pose legal liability risks for board members.

Due to the lack of relevant precedents (or even pending lawsuits) in Switzerland, the liability risks may still be perceived as moderate today; in addition, procedural hurdles are high. However, the economic significance of climate risks suggests that liability risks are increasing. Further indications include the expectation of stricter regulations (in Europe as well as in Switzerland) and the increasing pressure from institutional investors. In order to mitigate liability risks in the climate context, board members are well advised to properly identify company-specific risks and opportunities regarding climate change, to report on them adequately and to implement appropriate measures – all in compliance with their duty of care.

6.3 Shareholder or Parent Company Liability

Separation of Company and Shareholder/ Company and Subsidiary

Swiss law sets forth the principle of strict separation between a corporation limited by shares and its shareholders, as well as between corporations connected to each other in a holding structure. As a consequence, shareholders and parent companies can only be held liable for damages caused by the company or their subsidiary in exceptional cases.

Piercing the Corporate Veil

A shareholder can only be held directly liable for damages caused by the company to the extent the corporate veil is pierced, which is only the case under exceptional circumstances. According to the relevant case law, the shareholder of a company may be held liable irrespective of the liability shield of the legal entity, where:

- the legal entity and its beneficial owner(s) are identical from an economic perspective; and
- the use of the legal entity by its beneficial owners serves an abusive purpose or harms justified interests of third parties.

Similarly, a parent company can be held liable for damages caused by its subsidiary in the following exceptional cases.

- Liability as de facto director: if the parent company performs tasks that are within the responsibility reserved to directors and officers of the subsidiaries, it may be deemed to be a de facto administrative body and thus might be held liable.
- Liability arising from “piercing the corporate veil”: the liability shield between a parent company and its subsidiary may be disregarded under analogous circumstances as between the company and its shareholders (see above).
- Liability resulting from a justified trust in the group company: the parent company may have to accept liability if it has given rise to a justified trust concerning the responsibility of the group that it did not live up to.

Under Swiss law, it is possible in theory to hold shareholders and/or parent companies liable for climate change damages caused by the company or its subsidiary. However, the threshold is high and exceptional circumstances are necessary to pierce the corporate veil and disregard the liability shield between the company and its shareholders. Currently, there is no precedent

regarding the liability of shareholders and/or parent companies for climate change damages.

6.4 Environmental, Social and Governance (ESG) Reporting and Climate Change

In the recent past, the Swiss legislature has imposed a number of new ESG reporting duties on Swiss companies, some of which also include a climate change component. The current ESG-reporting framework is set out below.

General ESG/Non-financial Reporting Obligation

The obligation to prepare a report on "non-financial matters" (ESG report) is modelled after the EU Directive on Non-Financial Reporting (Directive 2014/95). The aim of the ESG report is to provide information about the company's environmental matters, in particular CO_2 targets, social matters, employee matters, respect for human rights and the fight against corruption. Specifically, the ESG report should cover the following (non-exhaustive) list of topics:

- the company's business model;
- a description of the company's ESG policies;
- a description of the measures taken to implement these policies and an assessment of the effectiveness of these measures;
- an assessment of the company's ESG-related risks resulting from its operations and its business relationships, products or services, if relevant and proportionate (risk assessment); and
- non-financial key performance indicators applied regarding the company's response to ESG risks (KPIs).

As regards the climate change-related component of the ESG report, the Federal Council intends to introduce TCFD-based reporting requirements, which will be part of the general ESG report. For this purpose, the Federal Council has decided that the Ordinance on Climate Reporting, according to which the climate change-related ESG-reporting obligations are fulfilled if the ESG report follows the recommendations of the TCFD, will enter into force on 1 January 2024.

The scope of application of the ESG-report obligation is rather narrow. In a nutshell, it only applies to large, listed or FINMA-regulated entities (banks, securities firms, asset managers, etc) domiciled in Switzerland with:

- at least 500 full-time employees on an annual average; and
- total assets of at least CHF20 million or revenues of CHF40 million in two consecutive years.

Entities that are controlled by an in-scope company or that are subject to equivalent reporting under foreign law are exempted from the ESG-reporting requirement.

The ESG-reporting obligation follows the "comply or explain" principle also known under EU law: if a company lacks policies on certain ESG topics, the ESG report must list justifiable reasons for the omission.

The ESG report may be based on national, European or international reporting standards, such as the OECD Guidelines for Multinational Enterprises or the standards of the Global Reporting Initiative (GRI). The report must be published in one of the Swiss national languages, or in English. It must be approved by the board of directors and the shareholders' meeting, and made electronically accessible to the public during a

period of ten years. The ESG report is not subject to an audit requirement.

The ESG report-related provisions entered into force on 1 January 2022. The first reports will be due ahead of the 2024 annual shareholders' meetings covering the financial year 2023.

Supply Chain-Related Due Diligence and Reporting Duties (Article 964j-964l, CO)

Further to the above-mentioned ESG-reporting obligations, some companies are required to take additional due diligence measures with corresponding reporting obligations regarding conflict minerals and child labour in their supply chain (supply chain due diligence).

Companies falling within the scope of application of the supply chain due diligence (see below) must maintain a management system, which includes:

- the supply chain policy for minerals and metals that potentially originate from conflict-affected and high-risk areas;
- the supply chain policy for products or services in relation to which there is a reasonable suspicion of child labour; and
- a system by which the supply chain can be traced.

Companies are further required to:

- identify and assess the risks of harmful impacts in their supply chain;
- draw up a risk management plan; and
- take measures to minimise the identified risks.

The supply chain due diligence obligations only apply to companies with registered seat, head office or principal place of business in Switzerland that either:

- circulate or process in Switzerland minerals containing "conflict minerals" (minerals or metals containing tin, tantalum, tungsten, or gold from conflict or high-risk areas); or
- offer products or services for which there is a reasonable suspicion of child labour.

Furthermore, exemptions apply for small and medium-sized companies (regarding child labour-related duties) and companies with little exposure to conflict minerals (below a certain de minimis amount of minerals) or child labour (supplies from recognised low-risk countries only).

The corresponding reporting on the new supply chain due diligence obligations is due for the first time for the financial year 2023 – ie, the report must be published within six months following the close of the 2023 financial year. The report has to be approved by the board of directors (but not by the annual general meeting) and is subject to an audit requirement as far as the conflict mineral-related due diligence obligations are concerned.

Additional Transparency Rules for Commodities Companies

An additional set of transparency rules applies for large, listed commodities companies. The transparency rules require in-scope companies to report on payments made to state bodies (in cash or in kind) in excess of CHF100,000.

Since the scope of application only covers companies which (either directly or through direct subsidiaries) are active in the field of either extraction of minerals, oil or natural gas, or harvesting of timber in primary forests (under exclusion of trading in these commodities), the

rules currently only apply to a handful of Swiss companies.

Other ESG Reporting and Climate Change Regulations

The International Sustainability Standard Board (ISSB) has developed two prototypes for climate-related reporting under the International Financial Reporting Standards (IFRS): the "IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information" and the "IFRS S2 Climate-related Disclosures". In Switzerland, either IFRS or US GAAP standards are – as a rule – applicable to stock exchange listed companies. Small and medium-sized enterprises may base their financial reports on national standards. For this reason, the direct effects of any new IFRS standards in Switzerland are limited. It is, however, noteworthy that IFRS standards are in general automatically adopted in Switzerland when issued by the board. Moreover, a number of Swiss companies voluntarily commit to reducing their greenhouse gas emissions through global initiatives such as the Science Based Targets initiative (SBTi).

7. Transactions

7.1 Due Diligence

Until quite recently, there was no separate workstream in legal due diligence focusing on climate change risks. Rather, climate change-related risks formed part of the assessment of the target's regulatory compliance (eg, adherence to the new due diligence and reporting duties; see **6.4 Environmental, Social and Governance (ESG) Reporting and Climate Change**) and the target's potential exposure to claims.

However, climate change-related topics play an increasingly important role in the selection of potential targets and M&A in general. Separate ESG due diligence workstreams are no longer uncommon in transactions where climate change-related topics are of particular importance given the target's business operations.

In property transactions, the legal assessment regarding the implementation of climate friendly investments (eg, new climate-friendly heating systems, photovoltaic systems, associations for self-consumption – *Zusammenschluss zum Eigenverbrauch* – where the residents of a building or buildings consume electricity that they have generated on-site themselves, energy-oriented refurbishment, green labels, etc) has become increasingly relevant, in particular for investment properties in connection with the requirements under the applicable tenancy law or in greenfield projects.

8. Climate-Friendly Investment Support

8.1 Renewable Energy

With the revision of the Energy Act and its entry into force in 2018, Switzerland has taken various measures regarding renewable energies.

Financial Contributions

In addition to a simplification of the approval procedures for new electricity generation plants, the Swiss federal government has created a number of financial contributions to support the implementation of renewable energy sources.

After a partial revision, which entered into force on 1 January 2023, the Energy Act provides for the following financial contributions (until the end of 2030):

- photovoltaic systems – contribution of up to 30% or up to 60% (in cases without self-consumption) of the investment costs of a comparable facility for the construction of new photovoltaic systems or the significant expansion of existing ones;
- auctions of large photovoltaic systems – contributions determined by means of auctions for large photovoltaic systems;
- hydropower – contributions of up to 60% for the construction of new hydropower plants as well as the extension of existing hydropower plants with an output of at least 300 kW or up to 40% for the renewal of existing hydropower plants with an output of at least 300 kW;
- biomass systems – contribution of up to 60% for the construction of new or significant expansion of existing biomass systems;
- wind energy systems – contribution of up to 60% for the construction of new wind energy systems; and
- geothermal plants – contribution of up to 60% for the prospecting or development of geothermal resources and construction of new geothermal plants.

Furthermore, owners of certain existing and reported systems and plants may benefit from a feed in renumeration.

Solar Obligation

As part of the partial revision that entered into force on 1 January 2023, the Swiss federal government introduced a solar obligation. Article 45a of the Energy Act states that when constructing new buildings with a relevant area of more than 300 square metres, a solar system such as a photovoltaic or solar thermal system must be installed on the roof or on the facades of these buildings. The cantons may provide for stricter regulations (eg, smaller relevant area). It is noteworthy that most cantons already had such provisions in place prior to the adaption of the federal provision. The cantons can also provide for exceptions, especially if:

- the solar obligation contradicts public law provisions;
- it is not technically possible; or
- it is economically disproportionate.

Currently, the solar obligation is limited until 31 December 2025. However, the Swiss federal government is already discussing the permanent introduction of the provision, as well as extensions such as the requirement to cover parking lots of a certain size with solar panels. Moreover, certain cantons also want to introduce a solar obligation for existing buildings.

8.2 Other Support

By ratifying the Paris Agreement, Switzerland has committed itself to the goal of aligning financial flows in a climate-friendly manner. The Climate and Innovation Act – if accepted in the popular vote on 18 June 2023 – would be the first formal legislation adopted on this subject. It would enable the Swiss federal government to conclude agreements with banks, asset managers, pension funds and insurance companies that serve to define concrete climate targets and measures. Since 2017, through the Paris Agreement Capital Transition Assessment (PACTA), Switzerland regularly assesses the climate compatibility of the entire Swiss financial market. In 2021, the Federal Council issued a report on how Switzerland can align financial flows in a climate-compatible way. Based on this report, the Federal Council is currently evaluating the implementation of transparency measures (eg, to avoid greenwashing) through financial market legislation.

Trends and Developments

Contributed by:
Beat Kühni, Fabiano Menghini, Marcel Meinhardt and Cécile Moser
Lenz & Staehelin

Lenz & Staehelin is one of the largest law firms in Switzerland, with over 250 lawyers and offices in Zurich, Geneva and Lausanne. The firm is internationally oriented, offering a comprehensive range of services and handling all aspects of international and Swiss law.

Authors

Beat Kühni became a partner at Lenz & Staehelin in 2003 and has led the real estate practice group in Zurich for over 15 years. He is an expert in construction and real estate law, particularly in portfolio transactions, ESG and climate change matters, as well as in development projects. He also advises Swiss and foreign investors on investment transactions, mainly on the acquisition, financing and sale of real estate and construction projects. In addition to his expertise in real estate-specific law, Beat Kühni has many years of experience in corporate and M&A, banking and financial market law, as well as in contract and commercial law.

Fabiano Menghini co-heads Lenz & Staehelin's real estate practice group in Zurich together with Beat Kühni. He advises on real estate transactions (asset deals, share deals, sale-and-rent-back transactions, asset transfers, development projects, etc) as well as on all other real estate-specific legal matters (including total contractor/general contractor agreements, planning agreements, project development agreements, tenancy and lease law, environmental law, ESG and climate-change related matters, Lex Koller, Lex Weber and real estate financing).

Marcel Meinhardt is a leading expert in competition law and is renowned for his broad, first-rate practice. He specialises in all areas of Swiss and European merger control work, horizontal and vertical agreements, cartels and abuse of dominance cases. He focuses on the assessment of sustainability effects and agreements in competition law, including standardisation agreements and relative market power in this field. Marcel Meinhardt also advises on regulatory issues in connection with the electricity, environmental and gas industry. He has acted in many high-profile and leading cases.

Cécile Moser advises and represents clients in all real estate and corporate and commercial matters. She works as an associate in Lenz & Staehelin's Zurich office and is a member of the firm's real estate and corporate and M&A practice groups.

Lenz & Staehelin

Brandschenkestrasse 24
CH-8027 Zurich
Switzerland

Tel: +41 58 450 80 00
Fax: +41 58 450 80 01
Email: zurich@lenzstaehelin.com
Web: www.lenzstaehelin.com

Contributed by: Beat Kühni, Fabiano Menghini, Marcel Meinhardt and Cécile Moser, **Lenz & Staehelin**

Swiss Climate Change Regulation: a Multifaceted and Ever-Changing Landscape

Swiss climate change regulation is made up of a large number of acts and ordinances, which are subject to constant revision. As part of the latest developments, the Swiss people will vote on the Climate and Innovation Act, which aims to implement the net-zero target agreed upon under the Paris Agreement and provides for a sustainable orientation of cash flows as part of the measures to be taken. On a compliance basis, the Swiss federal government has introduced non-financial, climate and sustainability-oriented reporting duties for companies, which will be relevant for the first time for the financial year 2023.

The Climate and Innovation Act: New Framework for Swiss Climate Change Policy

Overview

In 2017, Switzerland, together with 192 other countries and the EU, committed to reducing greenhouse gas emissions under the Paris Agreement. For this purpose, the Swiss federal government has created the Climate and Innovation Act. The Act intends to set the framework for Switzerland's comprehensive and multifaceted climate legislation. It aims to achieve the net-zero target through:

- the reduction of greenhouse gas emissions and application of negative emission technologies;
- the adaptation to and protection from the impacts of climate change; and
- the directing of financial resource flows towards low-emission development that is resilient to climate change.

The Act was subject to a referendum and will be voted on by the Swiss people on 18 June 2023.

Main objectives and measures

The Climate and Innovation Act was introduced as an indirect counter-proposal to the federal popular initiative "For a healthy climate", commonly known as the "Glacier Initiative" (*Gletscherinitiative*) and launched in 2019. Many Swiss politicians are of the opinion that the Glacier Initiative is taking things too far, since it aims to ban fossil fuels completely after 2050. The Climate and Innovation Act is set to ensure that the commitments entered into under the Paris Agreement are met through less invasive measures. The Glacier Initiative was withdrawn conditional upon the Climate and Innovation Act entering into force.

Reduction of greenhouse gas emissions

The main objective of the Climate and Innovation Act is to achieve the net-zero target by 2050. The Swiss federal government shall ensure that greenhouse gas emissions are reduced from 1990 levels in accordance with the following interim targets:

- on average over the years 2031–2040 – by at least 64%;
- by the year 2040 – by at least 75%; and
- on average over the years 2041–2050 – by at least 89%.

For this purpose, the Climate and Innovation Act sets reduction targets for the main emission sectors. By 2040, greenhouse gas emissions are to be reduced by:

- 82% in the buildings sector;
- 57% in the transport sector; and
- 50% in the industry sector.

Replacement of oil, gas and electric heating systems

As part of the implementation process of the Climate and Innovation Act, the Energy Act is to be amended as well. A new provision is to be introduced, according to which the replacement of oil and gas heating systems, as well as certain electric heating systems and heating systems from renewable energy, is to be subsidised by means of financial contributions. For this purpose, the Swiss federal government will provide CHF200 million per year, limited to ten years.

Innovation promotion

Furthermore, the Climate and Innovation Act aims at supporting companies that are investing in innovative technologies to reduce greenhouse gas emissions. The Swiss federal government shall provide financial contributions to such companies until the year 2030.

Protection against climate change

The Swiss federal government and the cantons shall take measures to prevent climate-related damages to people and property. Particularly, the Climate and Innovation Act aims to protect from:

- an increase in temperature and change in precipitation;
- intense, frequent and long-lasting extreme climatic events; and
- changes in habitats and species composition.

Sustainable cash flows

In the future, the Swiss Financial Center shall contribute to climate protection as well. The Climate and Innovation Act enables the Swiss federal government to conclude agreements with banks, asset managers, pension funds and insurance companies that serve to define concrete climate targets and measures.

Swiss federal government leading by example

According to the Climate and Innovation Act, the Swiss federal government, its institutions and the cantons should set an example for private companies. To this end, the central federal administration must achieve the net-zero target by 2040. Moreover, the central administrations of the cantons and federally affiliated companies such as Swiss Post and Swiss Federal Railways should aim to achieve the same target as well.

Outlook

If the Swiss voting population approves the Climate and Innovation Act, it will likely enter into force at the beginning of 2025. Should the Climate and Innovation Act be rejected, the committee responsible for the Glacier Initiative must decide whether it wishes to reintroduce the initiative and put it to a popular vote.

Consequences of the Responsible Business Initiative: New Reporting and Due Diligence Requirements for Swiss Companies

Overview

Even though the Responsible Business Initiative (*Konzernverantwortungsinitiative*), which was aimed, inter alia, at introducing a new vicarious liability regime for damage caused by controlled entities abroad (including environmental damage), failed to win the required majority and was thus rejected in a popular vote, the initiative forced the Swiss Parliament to present a counter-proposal that provides for significantly tighter rules on ESG due diligence and reporting. These new rules, some of which are already in force while others are still being implemented by the legislature (for example, with regard to climate reporting), should definitely be kept in mind by companies operating in Switzerland or that plan to set up operations in Switzerland.

While the counter-proposal does not introduce new civil liability provisions for climate or other environmental damage caused by subsidiaries and economically controlled businesses abroad, Swiss companies would be well advised to implement new due diligence and reporting obligations carefully and promptly, in order to avoid reputational and legal risks resulting from new duties of care imposed by the counter-proposal and that may lay grounds for potential liability claims. A failure to implement the prescribed due diligence and reporting obligations may, under certain circumstances, expose a company or its corporate bodies to civil law claims.

The significant changes imposed by the counter-proposal in the area of ESG due diligence and reporting include extensive, new reporting obligations on non-financial matters, which also cover climate change-related topics.

Non-financial reporting duties

The non-financial reporting obligations are modelled after the EU Directive on Non-Financial Reporting (Directive 2014/95). The aim is to provide investors and other stakeholders with adequate information about a company's environmental matters, in particular concerning its CO_2 targets, social matters, employee matters, respect for human rights and the fight against corruption.

While the new reporting obligations are rather extensive and require a considerable effort both to implement and to monitor, the relevant thresholds for Swiss companies to fall within the scope of application are set rather high.

Scope of application

The duty to issue an annual report on non-financial matters applies to large Swiss "public interest companies" only, which include:

- publicly traded companies (ie, companies having securities listed on a stock exchange, bonds outstanding, or contributing at least 20% of the consolidated assets or turnover of such a company); or
- regulated entities supervised by the Swiss Financial Market Supervisory Authority, FINMA (eg, banks, insurance companies or securities firms).

Regarding the size of a "public interest company", the following thresholds apply, which must be exceeded over the course of two consecutive business years (including controlled entities worldwide). The "public interest company" must:

- have at least 500 full-time employees (measured as an annual average); and
- have exceeded either a balance sheet sum of CHF20 million or a turnover of CHF40 million.

Exemptions apply for large Swiss "public interest companies" that are controlled either by an "in scope" company or by a company subject to equivalent reporting obligations under foreign law.

Content

In addition to the traditional financial reporting obligations, "in-scope" companies will have to draft a report on non-financial matters, which must be submitted to the annual general meeting for approval and then remain publicly available for ten years. The report should include:

- a description of the company's business model;
- a description of the company's adopted ESG policies;
- a description of the measures taken to implement these policies and an assessment of the effectiveness of these measures;

- an assessment of the ESG-related risks that result from the company's operations and its business relationships, products or services, if relevant and proportionate; and
- non-financial key performance indicators applied regarding the company's response to ESG risks (KPIs).

In substance, the report must generally cover the company's environmental, social and employment-related matters, respect for human rights, and anti-corruption (for climate change-related matters, see the New climate change-related reporting in particular section below). If a company opts not to employ a diligence concept in one of the aforementioned ESG-related areas, it must state the reasons for this in the report in a clear, unambiguous and justifiable manner ("comply or explain" approach). The report must extend to controlled entities worldwide.

Public interest companies are free to follow national, European or international standards (such as the OECD Guiding Principles). If such a standard is applied, it must be explicitly referenced in the report and must be complied with in its entirety. This would seem an obvious option for businesses that have already implemented reporting according to such a recognised standard. When applying such standards, Swiss law must nonetheless be complied with entirely, which may mean that a supplementary report must be drawn up if necessary to ensure such compliance.

New climate change-related reporting in particular

With regards to the environmental and climate change-related component of the non-financial reporting, the Swiss Federal Council has decided to set out the details of such reporting in a separate ordinance (Ordinance on Climate Reporting), which will enter into force on 1 January 2024. The aim of the ordinance is to create a basis for climate reporting that follows uniform criteria and is therefore comparable. This should facilitate investors' search for suitable companies and prevent greenwashing.

Instead of setting up new reporting standards, the Swiss Federal Council chose to take the recommendations of the Task Force on Climate-Related Financial Disclosures (TCFD) as a basis for the new reporting obligations. The TCFD was created by the Financial Stability Board to improve and increase reporting of climate-related financial information.

Scope of application

As mentioned, the reporting obligations regarding climate change-related topics are part of the general non-financial reporting. Hence, only companies falling within the scope of non-financial reporting are also required to issue a climate change-related report.

Content

According to the Ordinance on Climate Reporting, there is a presumption that reporting on climate-related matters is complied with if the reporting is based on the recommendations of the Task Force on Climate-Related Financial Disclosures. However, this presumption does not exclude that the reporting may also be based on other guidelines or standards. In these cases, however, the company must be able to provide evidence that the required reporting obligation is fulfilled in a different way.

The recommendations referenced in the Ordinance on Climate Reporting were issued by the TCFD under the title "Recommendations of the Task Force on Climate-Related Financial Disclosures". They were supplemented in October

2021 by the annex "Implementing the Recommendations of the Task Force on Climate-Related Financial Disclosures" and the supporting document "Guidance on Metrics, Targets, and Transition Plans". In order to benefit from the presumption of compliance, the climate reporting must be based on the recommendations of the TCFD as amended in June 2017 and the annex thereto as amended in October 2021.

The report should cover all of the 11 recommendations of the TCFD in the following four thematic areas:

- governance;
- strategy – including, in particular, a transition plan with targets for greenhouse gas emissions and specific activities to reduce greenhouse gas emissions in operations and the value chain;
- risk management; and
- key performance indicators and targets – in each case stating the underlying assumptions and methodologies used, and including forward-looking, scenario-based analyses.

In addition, the reporting must take into account both the cross-sectoral "Guidance for All Sectors" and the sector-specific "Supplemental Guidance for Certain Sectors" for the 11 recommendations. For a "best efforts" undertaking, the implementation guidance ("Guidance on Metrics, Targets, and Transition Plans"; version of October 2021) should also be taken into account to the extent feasible and appropriate.

The climate-related reporting obligations follow the same "comply or explain" approach as the non-financial reporting obligations. If certain areas of climate reporting are left out, such omission must be clearly explained and justified in the report.

Formal requirements

The board of directors approves and signs the report on non-financial matters (including the reporting on climate matters) and submits it to the annual general meeting (or to any other body responsible for approving the annual financial statements) for approval. An external audit is currently not required by law.

Given the novelty of the new legislation, best practice is yet to evolve. Some companies have introduced one or more committees that deal with the reporting on non-financial matters and/or that engage an external firm to audit the reports on a voluntary basis, in particular in light of the criminal sanctions for providing false information in the report or for failure to comply with the reporting obligations. Specifically, the individual persons involved in the reporting on non-financial matters may be sanctioned with fines of up to CHF50,000 (for negligence) and up to CHF100,000 (for intent) for providing false information in the report or for failing to comply with the reporting obligations.

Entry into force and sanctions

While the general provisions on non-financial reporting have already entered into force (on 1 January 2022), the Ordinance on Climate Reporting will enter into force on 1 January 2024. Thus, the report on non-financial matters will be applicable for the financial year 2023 for the first time – ie, the report will have to be published ahead of the 2024 annual general meeting. A transitional period of one year applies to the obligation to publish the report in a machine-readable format.

Further consequences

Further to the new reporting obligations on non-financial matters, the Responsible Business Initiative has paved the way for strict due diligence obligations with respect to child labour and con-

flict minerals, which will also be applicable for the financial year 2023 for the first time.

In contrast to the reporting obligation on non-financial matters, the new due diligence obligations in the area of conflict minerals and child labour do not only apply to major listed companies and regulated financial entities. In principle, they apply to each company domiciled in Switzerland whose operations may potentially come into contact with conflict minerals or child labour by either:

- importing conflict minerals or processing them in Switzerland; or
- offering products or services for which there are reasonable grounds to suspect that they have been produced or provided by children.

Exemptions apply for small and medium-sized and low-risk companies.

Possible re-launch of the Responsible Business Initiative

Three years after being rejected in the popular vote, the so-called Coalition for Responsible Multinationals wishes to re-launch the Responsible Business Initiative on a cantonal level. Reportedly, new cantonal initiatives modelled after the Responsible Business Initiative are to be launched soon in the cantons of Basel City and Geneva. Because Swiss law only allows the introduction of new civil liability standards on a national level, compliance with the new provisions is to be ensured by a newly created, independent supervisory body with the competence to issue fines. It is noteworthy that the chances of such initiatives being accepted in the cantons concerned are good, considering that both cantons voted in favour of the Responsible Business Initiative back in 2020.

The Coalition for Responsible Multinationals does not rule out the launch of a new legislative project similar to the Responsible Business Initiative on a national level either. Because planned EU regulations are expected to be stricter than the implemented counter-proposal, the fear is that Switzerland will become a safe haven for companies with questionable business practices.

Outlook

With several ESG-related changes having just come into force or that will shortly come into force (on a federal and also on a cantonal level), companies are well advised to clarify in depth whether the new obligations apply to them and how they intend to implement them. If applicable, companies need to start implementing the new obligations now in order to be prepared for the financial year 2023. Even companies that are not currently in scope will need to keep an eye on the new regulatory obligations and consider implementing them (at least in part) voluntarily to increase their attractiveness to investors and lenders.

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