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# International Bar Association

Capital Markets Forum and  
Securities Law Committee

## ESG survey 2022



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# Contents

<b>ESG survey 2022 regarding the disclosure regime in capital market transactions conducted, by the IBA Capital Markets Forum and the IBA Securities Law Committee</b>	<b>5</b>
<b>Law firms participating in the survey</b>	<b>7</b>
<b>Analysis of the ESG survey</b>	<b>8</b>
<b>Survey completed by the participants: full text</b>	<b>17</b>
Argentina	18
Austria	24
Belgium	30
Brazil	35
Canada	41
Chinese Mainland	48
Colombia	53
Denmark	60
Egypt	63
Finland	69
France	74
Germany	80
Grand Duchy of Luxembourg	87
Greece	94
Hong Kong	97

India	105
Ireland	112
Italy	117
Japan	122
Lithuania	125
Mexico	132
Netherlands	135
Nigeria	145
Pakistan	149
Peru	152
Poland	158
Singapore	167
South Korea	170
Spain	176
Sweden	184
Switzerland	191
Thailand	197
Turkey	201
United Kingdom	205
United States	208
Vietnam	211

# **ESG survey regarding disclosure regulations and capital market transactions**

**Questionnaire for Switzerland**

1	<b>Which jurisdiction are you covering?</b>	Switzerland
2	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	<p>In 2020, the so-called Responsible Business Initiative was put before the public, but rejected. However, drawing conclusions from the political discussion, the Swiss Parliament introduced new general and specific ESG reporting, and due diligence requirements in the area of conflict minerals and child labour as a counter-proposal, which came into effect on 1 January 2022. It sets out non-financial reporting obligations, and due diligence and transparency obligations:</p> <ul style="list-style-type: none"> <li>• Certain companies have to meet non-financial reporting obligations and account for environmental issues (especially regarding CO2 targets), social issues, employee issues, respect for human rights and anti-corruption. This obligation applies to PIEs (ie, publicly traded companies, banks, insurance companies and other regulated entities in the financial sector) that, together with their subsidiaries in Switzerland and abroad, have at least 500 full-time employees (averaged over the year) and exceed either a balance sheet total of CHF 20m or a turnover of CHF 40m.</li> <li>• In December 2021, the Swiss Federal Council (ie, the Swiss Government) issued an ordinance dealing with due diligence and reporting obligations: Companies with their place of incorporation or head office in Switzerland that import or process minerals or metals containing tin, tantalum, tungsten or gold from conflict or high-risk areas are subject to special due diligence and related reporting obligations with respect to their supply chain. The same obligations apply to companies that offer products or services where there are reasonable grounds to suspect that they were produced or provided using child labour.</li> </ul> <p>Certain further regulatory guidelines are also in the making. In March 2022, the Swiss government published a draft ordinance, which specifies climate-related reporting obligations. The ordinance was expected to come into force on 1 January 2023. The recommended reporting obligations will apply to large Swiss companies and are part of the general ESG reporting. The general ESG report will have to be issued for the first time in 2024 with respect to financial year 2023.</p> <p>Pursuant to the Directive on Information relating to Corporate Governance, issuers whose equity securities have their primary listing on the SIX Swiss Exchange may undertake, by means of opting-in, the preparation of sustainability reports in accordance with an internationally recognised standard and publish them on their website. The SIX Exchange Regulation recognises the following international standards for sustainability reporting: the GRI, the SASB standards, the UN Global Compact and the European Public Real Estate Association's Best Practices Recommendations on Sustainability Reporting.</p> <p>The Swiss Financial Market Supervisory Authority (FINMA), the competent Swiss regulator for banks, insurance companies and certain other entities acting in the financial sector, also requires large banks (supervisory categories 1 and 2 (ie, internationally active systemically relevant banks and non-internationally active systemically relevant banks)) and insurance companies (category 2) to disclose climate risks, and has revised its circulars in this respect (TCFD). The main climate-related financial risks and their impact on the business strategy, business model and financial planning must be described (strategy). Institutions must disclose the process for the identification, assessment and treatment of climate-related financial risks (risk management), as well as quantitative information (including a description of the methodology used). Finally, institutions must describe the key features of their governance structure in relation to climate-related financial risks.</p> <p>In addition to the above 'legislative' initiatives, various industry associations have issued guidelines and recommendations on how to proceed with the implementation of ESG factors, such as (but not limited to) the Swiss Bankers Association (SBA), Asset Management Association Switzerland (AMAS) and the Swiss Pension Fund Association (Association Suisse des Institutions de Prévoyance or ASIP).</p> <p>The Federal Office for the Environment and the State Secretariat for International Finance initiated a third climate test in 2022 to analyse financial portfolios (global equities, corporate shares and loan portfolios) for their climate impact and to track the progress of the financial markets' climate goal alignment. The test, titled the Paris Agreement Capital Transition 2022 (PACTA 2022), was voluntary and anonymous. All Swiss banks, asset managers, pension funds and insurance companies could participate.</p>
3	<b>If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?</b>	Yes, to date, the disclosure/reporting obligations in the field of ESG mainly focus on certain 'public interest companies', companies active in certain sectors, large companies or large banks and insurance companies (see question 2).

4	<p><b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met prior to mandatory disclosure requirements being triggered?</b></p>	<p>Non-financial reporting obligations only apply to so-called PIEs (ie, Swiss publicly traded companies, banks, insurance companies and other regulated entities in the financial sector) that, together with their subsidiaries in and outside Switzerland, have at least 500 full-time employees (averaged over the year) and exceed either a balance sheet total of CHF 20m or a turnover of CHF 40m.</p> <p>The general due diligence and reporting obligations apply to all companies with their place of incorporation or head office in Switzerland that import or process minerals or metals containing tin, tantalum, tungsten or gold from conflict or high-risk areas. These companies are subject to special due diligence and related reporting obligations with respect to their supply chain, or offer products or services where there are reasonable grounds to suspect that they were produced or provided using child labour.</p> <p>FINMA's duties to disclose climate risks only apply to large Swiss banks and insurance companies.</p>
5	<p><b>What are the circumstances in which such ESG disclosures are triggered; that is, are ESG disclosures triggered in the case of certain transactions only or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b></p>	<p>Where required, as a general matter, ESG disclosures are to be made on a continuous reporting basis. In addition – although not legally required but generally requested/expected by the market and wise to use in order to avoid prospectus liability – where specific financial products or bonds are issued and labelled as 'green', 'social' or 'sustainable', transaction-specific disclosure on the use of proceeds and the applicable standards is typically included.</p>
6	<p><b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b></p>	<p>Non-financial reporting for public interest companies as per the counter-proposal (see question 2) must be made in a separate report. Such a report has to be approved and signed by the board of directors, which is responsible for the substantive review of the report. In addition, it must be approved by the general meeting of shareholders (but does not need to be audited by the company's auditors). In accordance with the principle of 'comply or explain', a reporting company may elect not to report in relation to matters with respect to which the group does not pursue policies if the report provides a clear and reasoned explanation therefor, for example, if due to its activities, the group has no or only very minor risks related to certain non-financial matters. Like the annual financial statements, the report must be prepared in one of Switzerland's official languages (German, French, Italian or Romansh) or in English. The board of directors has to publish the report electronically immediately after its approval and ensure that it remains publicly available for at least ten years.</p> <p>The due diligence and related reporting obligations have to be in an annual report on compliance with these obligations, which may be included in the report on non-financial matters, if applicable. The annual report must be published electronically within six months after the end of the financial year and remain publicly available for at least ten years.</p> <p>The reporting on climate risks required for large banks and insurance companies is part of the general financial report and must be within the appropriate parts of the financial report. Partial or complete references to separately published reports are also possible.</p>
7	<p><b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?</b></p>	<p>The general non-financial reporting for public interest companies is part of a separate report. Such a report must be published electronically and remain publicly available for at least ten years. The due diligence and related reporting obligations have to be in an annual report on compliance with these obligations, but may be included in the report on non-financial matters, if applicable. The report must be published electronically within six months after the end of the financial year and also remain publicly available for at least ten years.</p> <p>The climate risk-related disclosure for large banks and insurance companies is part of the annual reporting which, as a rule, must also be available on the banks' or insurance companies' websites.</p>

8	<b>In the case in which there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	<p>Irrespective of whether the ESG disclosure applies, there is increasing pressure from investors to prepare and publish the ESG disclosure. This pressure is driven by the demand for ‘green’, ‘social’ or ‘sustainable’ investments for funds, pension funds or asset managers, as well as the general public’s expectation that companies are in line with ESG aspects.</p> <p>To prevent and combat misleading practices, that is, so-called ‘greenwashing’, FINMA published respective guidance in 2021 (FINMA Guidance 05/2021), which applies to sustainability-related collective investment schemes and their management companies. Apart from information and organisational requirements applying to funds and management companies, it sets out expectations with regard to rules to be followed at the point of sale (advisory process).</p>
9	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	<p>For violations of non-financial reporting, due diligence and related reporting obligations, the public prosecutor is responsible as the violation is regulated in the Swiss Criminal Code.</p> <p>Violations of climate-risk related disclosure by large Swiss banks and insurance companies are sanctioned by FINMA.</p> <p>Violations of disclosure obligations required by the regulations of a Swiss trading venue, such as the SIX Swiss Exchange, are sanctioned by the relevant trading venue bodies.</p>
10	<b>What are the penalties for false or misleading ESG disclosures? Does your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	<p>Non-compliance with the non-financial reporting obligations of public interest companies set out above (see question 2) is subject to criminal liability under the Swiss Criminal Code. Anyone who makes false statements in, or fails to provide, a required report will be fined up to CHF 50,000 in the case of negligence and up to CHF 100,000 in the case of intent.</p>
11	<b>Is there a tiered disclosure system in your jurisdiction and are any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	<p>The Swiss system of ESG disclosure is still developing. We expect there to be more regulations on ESG disclosure in the future or at least a broader range of companies to be subjected to ESG disclosure.</p>
12	<b>Is there a system of ESG certification or benchmarks that needs to be met to have an ‘ESG approved/compliant’ status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	<p>There is no certification system, yet. However, recently (29 June 2022), the Federal Council launched Swiss Climate Scores for climate transparency in financial investments. Swiss Climate Scores provide institutional and private investors in Switzerland with comparable and meaningful information on the extent to which their financial investments are compatible with international climate goals. The Federal Council recommends that Swiss financial market players apply the Swiss Climate Scores to financial investments and client portfolios where appropriate.</p>
13	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	<p>Please see question 2.</p>



14	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, and if so, how does your jurisdiction require entities to make specific climate change disclosures?</b>	The climate risk disclosure required by FINMA for large banks and insurance companies focuses on the risk of climate change (see question 2). The other ESG disclosures are more general in scope.
15	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	There is no standardisation yet. Companies are relatively free in the way they present the ESG disclosure, provided the minimum requirements are met. The disclosure required by FINMA for large banks and insurance companies also just regulates the minimum content of the disclosure.
16	<b>Is there a clear guidance and definition of what applicable law envisages in terms of ESG disclosures; that is, does applicable law clearly define the scope of what is included in ESG?</b>	The relevant regulations, including the implementing ordinances, regulate what the reports have to cover. There is, however, no standardised checklist that regulates the order of publication and/or how it is to be presented, provided the content is included.
17	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	There is no such specific rule and/or established practice in this respect yet.
18	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	The main driver of value creation and/or reduction has been the market generally, lifted or fuelled by cheap central bank money. Moreover, regulation on ESG disclosure still is emerging. Through a growing focus on ESG generally, ESG-compliant or eligible investments may have profited more. There is, however, not yet enough reliable data to draw a conclusion and the general 'greening of the financial market' will certainly make good analysis more difficult.
19	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	For financial institutions, greater, more transparent, clear and effective ESG disclosure aids their 'ESG compliance' and reduces the risk that 'greenwashing' and other topics materialise. For issuers generally, being transparent on ESG-related aspects that they may have performed for years and can now stick a label on and report may help to attract different and/or more investors. Notwithstanding this, the administrative effort (especially given the risk of wrong/false disclosure and/or being blamed for 'greenwashing' generally) will be significant and will lead to increased costs.

20	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	We expect that the focus will be on the standardisation and comparability of ESG aspects and related disclosure generally.
21	<b>Please provide your name, firm name and a brief biography about yourself (optional).</b>	Theodor Härtsch, Walder Wyss. Benjamin Leisinger, Homburger. Patrick Schleiffer, Lenz & Staehelin.



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