Regulation Mapping

Swiss Conflict Minerals and Child Labour Due Diligence Provisions

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Swiss Conflict Minerals and Child Labour Due Diligence Provisions

Applies to:

Enterprises with their registered office, central administration or principal place of business in Switzerland, if certain thresholds are met for doing business relating to conflict minerals or offering products or services that induce a justified suspicion of an involvement of child labour.

What it says:

To further responsible business practices by Swiss companies by implementing mandatory human rights due diligence requirements for conflict minerals and child labor

Penalty:

Intentional (1) violations of the reporting or traceability documentation obligations and (2) false statements in a report will carry a fine of up to SFr100,000. In the case of negligence only (i.e., no wilful misconduct), the maximum fine will be SFr50,000

Proposed:

The Provisions entered into effect on January 1, 2022, and its requirements are applicable for the first time for fiscal year 2023.

Key Requirements:

GHG emission tracking
Supply Chain Mapping
Third party assurance
Adverse media reporting
Xinjiang/WRO mapping
External reporting
Supplier / risk monitoring
Supplier engagement
Supplier training
Remediation plan
Product mapping
ESG risk analysis
Supplier assessments
Supplier corrective action plan

Overview - Swiss Conflict Minerals and Child Labour Due Diligence Provisions

Law / Country	Swiss Code of Obligations Section 221.433: Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labor (collectively, the "Provisions") (Switzerland)
Goal	To further responsible business practices by Swiss companies by implementing mandatory human rights due diligence requirements for conflict minerals and child labor
Adoption / Status	Swiss Code of Obligations Section 221.433 was adopted on December 3, 2021. On December 3, 2021, the Federal Council (i.e., the Swiss executive branch) published an ordinance under the Swiss Code of Obligations regarding conflict minerals and child labor due diligence. The Provisions entered into effect on January 1, 2022, and its requirements are applicable for the first time for fiscal year 2023.
Issues Addressed	• Conflict minerals and metals • Child labor **"Conflict minerals and metals"** applies to tin, tantalum, tungsten and gold ("3TG") from conflict-affected or high-risk areas. These minerals and metals are specified in more detail on an Annex to the Ordinance. The in-scope 3TG minerals and metals are limited to specified tariff numbers and consist of ores, concentrates, powders, rods, wires and other forms of 3TG at a similar stage of processing. **"Conflict-affected and high-risk areas"** are areas in a state of armed conflict or fragile post-conflict as well as areas witnessing weak or non-existent governance and security and in which widespread and systematic violations of international law, including human rights abuses, take place. "**Child labor**" includes the following, whether carried out within or outside of an employment relationship: • Work performed by persons under 18 that comes under the International Labour Organization's (the "ILO") Worst Forms of Child Labour Convention ("**Convention No. 182");** • If a jurisdiction has ratified the ILO's Minimum Age Convention ("**Convention No. 138"),** child labor prohibited by that jurisdiction's laws in conformity with Convention No. 138; • If a jurisdiction has not ratified Convention No. 138, work performed by persons who are subject to compulsory schooling or who are 15 or under; and • If a jurisdiction has not ratified Convention No. 138, work performed by persons who have not yet reached the age of 18 if that work is expected to be dangerous to life, health or morals of the worker by its nature or the conditions under which the work is performed.

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Mandatory	Yes
Due Diligence	Enterprises that are not exempt from due diligence will be required to conduct risk-based due diligence in respect of child labor and conflict minerals and metals, as applicable. This will include putting in place the following systems, subject to a partial exception if the subject enterprise only imports and processes recycled metals, as discussed in this summary: **Supply Chain Policy:** Under the policy, the enterprise must, as applicable: • Ensure it complies with due diligence obligations in its supply chains, when (1) offering products or services that are reasonably suspected of having been manufactured or provided using child labor and/or (2) procuring 3TG originating from conflict-affected and high-risk areas; • Communicate up-to-date information on the policy to its suppliers and the public; • Integrate the supply chain policy into contracts and agreements with suppliers; • Ensure that concerns about child labor and conflict minerals in its supply chain can be reported; and • Investigate concrete indications of child labor and/or identify and assess risks of adverse impacts of 3TG originating from conflict-affected and high-risk areas in the supply chain, and in each case take appropriate measures to avoid or mitigate adverse impacts, evaluate the results of measures taken and communicate the results of the measures taken. The policy is required to specify the tools used by the enterprise to identify, assess, eliminate and/or mitigate adverse impacts in its supply chain. These include in particular the following: • On-the-spot checks; • Information from public authorities, international organizations and civil society; • Use of experts and specialist literature; • Assurances from supply chain economic operators and other business partners; and • Use of recognized standards and certification schemes. The “supply chain” is defined as a process covering both the enterprise’s own business activities and those of all upstream economic operators that (1) have minerals or metals originating from conflict-affected or high-risk areas in their custody and that are involved in their movement, preparation and processing in the final product or (2) offer products or services for which a reasonable suspicion exists that such products or services were produced using child labor

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Mandatory	Yes
Due Diligence (cont)	**Traceability System:** Enterprises must establish a supply chain traceability system for child labor and/or conflict minerals and metals, as applicable. The requirements differ for each of these subject areas. • Child labor. The traceability system must contain and document the following information where there is a reasonable suspicion of child labor: • The description of the product or service and, if any, trade name; and • The name and address of the supplier and the production sites or the service provider to the enterprise. • Conflict minerals and metals. The traceability system must contain and document the following information for 3TG originating from a conflict-affected and high-risk area: • The description of the mineral or metal, including its trade name; • The name and address of the supplier; • The country of origin of the mineral; • For metals, the name and address of the smelters and refiners in the supply chain; • For minerals, to the extent available, the volume or weight and the date mined; • For minerals originating from conflict-affected and high-risk areas or for which the enterprise has identified other supply chain risks specified in the conflict minerals-related Specified Instruments, additional information accordance with the supply chain recommendations in those instruments, such as mine of origin, where the mineral is combined with other minerals, traded or processed and the taxes, duties and fees paid; and • For metals, (1) where available, assessments of smelters and refiners carried out by third parties, (2) where these assessments are not available, the country of origin of the mineral and the location of the smelter or refiner and (3) for metals originating from conflict-affected and high-risk areas or if other supply chain risks specified in the previously listed conflict minerals-related Specified Instruments have been identified, additional information relating to downstream undertakings in accordance with the recommendations in those Specified Instruments. By-products are required to be traced back only to the point at which they were first separated from their primary mineral or metal. **Grievance Mechanism:** In addition to referring to grievance reporting in the policy requirements, as an early warning mechanism for risk identification, the enterprise must provide a reporting mechanism that allows all interested persons to express reasonable concerns regarding actual or potential adverse impacts relating to child labor or 3TG. The enterprise must document any complaints received.

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Mandatory	Yes
Due Diligence (cont)	**Risk Mitigation** The probability and severity of adverse impacts must be taken into account in connection with the identification and assessment of supply chain risks. Risks are to be identified and assessed based on the Specified Instruments. The probability and severity of adverse impacts also is to be taken into account in the elimination, prevention or mitigation of identified supply chain risks. The effectiveness of the measures taken is required to be assessed on a regular basis. **Audit Requirements Relating to 3TG:** If conflict minerals and metals due diligence is conducted, an annual third-party audit is required. The scope of the audit is to provide negative assurance concerning the enterprise's compliance with its 3TG-related diligence obligations under the Provisions. The auditor must be admitted as an audit expert pursuant to the Swiss Audit Oversight Act. The audit requirement does not extend to child labor due diligence.
Reporting	Subject enterprises that are required to conduct due diligence will be required to annually report on their compliance with the due diligence obligation, subject to the reporting exceptions described in this summary
Reporting Exceptions	Enterprises based in Switzerland are exempt from the reporting requirement if they are controlled by a company established abroad that publishes a similar report. The Swiss enterprise must include a note in its financial statements indicating the controlling company that includes the Swiss enterprise in its report. The enterprise also is required to publish the controlling company's report. Enterprises that offer products or services from enterprises that already have published a report are exempted from the duty to publish a report.
Enforcement	Intentional (1) violations of the reporting or traceability documentation obligations and (2) false statements in a report will carry a fine of up to SFr100,000. In the case of negligence only (i.e., no wilful misconduct), the maximum fine will be SFr50,000.

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Due Diligence and Reporting Exceptions	Child Labor: There are three exceptions specific to the child labor due diligence and reporting requirements of the Provisions. However, these exceptions do not apply if the products or services are conclusively made or provided with child labor. Small or medium-sized enterprise. An enterprise generally is not subject to the child labor due diligence and reporting requirements of the Provisions if it is a small or medium-sized enterprise (an “SME”). An enterprise is an SME if it and its controlled entities are under two of the following thresholds for two consecutive fiscal years: • Total assets of SFr20 million; • Sales of SFr40 million; and • An annual average of 250 full-time employees. Low risk of child labor. An enterprise also generally is not subject to the child labor due diligence and reporting requirements of the Provisions if it presents a low risk of child labor. Under these circumstances, the enterprise is not required to assess whether there is a reasonable suspicion of child labor. An enterprise is considered to be “low risk” for child labor if the products the enterprise purchases or manufactures or the services it procures or provides are from countries designated as “Basic” in UNICEF’s Children’s Rights in the Workplace Index. This assessment must be conducted annually. An enterprise that is low risk for child labor must document its conclusion. The conclusion is not required to be published or filed with a regulator. Lack of reasonable suspicion. If an enterprise concludes that it cannot utilize the above-mentioned exemptions, it may be exempted from the child labor due diligence and reporting requirements if there is not a reasonable suspicion of child labor. There is a reasonable suspicion of child labor if there is specific information available that would lead a reasonable person to believe that a product or service involves child labor. If the enterprise concludes there is not a reasonable suspicion of child labor, it must document its finding. The finding is not required to be published or filed with a regulator. **Conflict Minerals and Metals:** De minimis 3TG usage. An enterprise is not subject to 3TG due diligence and reporting requirements if the 3TG it imports or processes does not exceed the levels specified on an Annex to the Ordinance. For purposes of calculating whether a threshold is exceeded, the undertakings consolidated under the enterprise are included. 3TG not from a conflict-affected or high-risk area. The Provisions do not identify specific areas by name as conflict-affected and high-risk. The Federal Council’s guidance refers to the European Union’s 2018 recommendations for determining whether areas are conflict-affected and high-risk for purposes of the EU Conflict Minerals Regulation and the list of conflict affected and high-risk areas periodically published by Rand International. According to the Federal Council’s guidance, this assessment must be done on a regular basis since conflict-affected and high-risk areas are not static. If the enterprise concludes its 3TG is not from a conflict-affected or high-risk area, it must document its finding. The finding is not required to be published or filed with a regulator.

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Due Diligence and Reporting Exceptions **(cont)**	Compliance with an Equivalent Regulation or Instrument: If none of the above exemptions are available, an enterprise will be exempt from due diligence and reporting if it complies with an internationally equivalent regulation or instrument. The regulations and instruments that currently qualify are listed on an Annex to the Ordinance (the "Specified Instruments"). The current Specified Instruments for child labor and conflict minerals and metals are: **Child labor** • Convention No. 182, Convention No. 138 and the ILO-IOE Child Labour Guidance Tool for Business; and • The OECD Due Diligence Guidance for Responsible Business Conduct. **Conflict minerals and metals** • The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High- Risk Areas; or • The EU Conflict Minerals Regulation. To utilize this exception, the enterprise must prepare a report that identifies the Specified Instrument and comply with its requirements in their entirety.