

Human rights due diligence in Swiss banking today

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For Swiss banks and asset managers, the questions raised by the colonial history are part of the modern framework of responsible finance. Banks that finance companies or projects, and asset managers that invest in them, may be exposed to adverse impacts on human rights and the environment through their clients and investees. The UN Guiding Principles on Business and Human Rights apply to financial institutions. The OECD, for its part, has published guidance on responsible business conduct for institutional investors and for corporate lending and securities underwriting.¹

The Swiss Bankers Association has published guidance for its members on the implementation of the UN Guiding Principles. Several Swiss banks have adopted policies that exclude financing for certain sectors or activities, require environmental and social due diligence for large transactions and report on their approach to human rights.² Complaints against Swiss financial institutions have been brought before the Swiss National Contact Point for the OECD Guidelines, which offers mediation between the parties.

The legal obligations of Swiss financial institutions in this area remain limited compared with those of the European Union. The due diligence obligations of the Code of Obligations for conflict minerals and child labour apply to companies that import or process such materials and products. Banks that finance them fall outside their direct scope. The reporting obligations on non-financial matters apply to large public-interest entities, including large banks and insurers, which must report on their approach to human rights, environmental and social matters and corruption. The FINMA has issued rules on the disclosure of climate-related financial risks by large banks and insurers.³

The practitioner who advises Swiss financial institutions or their clients on these questions works in a field in which law, ethics and reputation

intersect. The history of Basel's involvement in the colonial economy shows that financial institutions can be judged by later generations for their participation in activities that were lawful at the time but are regarded today as grave injustices. The prudent institution asks whether a transaction is lawful and whether it is defensible in the light of the values that its clients, its employees and the public hold, and whether it would remain defensible if its details became known. This question, which the merchants of eighteenth-century Basel rarely asked, has become part of the professional ethics of modern finance.

1 Notes

1. OECD, Responsible business conduct for institutional investors, 2017; OECD, Due Diligence for Responsible Corporate Lending and Securities Underwriting, 2019. To be verified. ↩
2. On the guidance of the Swiss Bankers Association on human rights and sustainable finance and the policies of Swiss banks, see the publications of the Swiss Bankers Association and the sustainability reports of the banks. To be verified. ↩
3. On the scope of the Swiss due diligence and reporting obligations (Art. 964a ff. and 964j ff. CO) for financial institutions, and on FINMA's disclosure requirements on climate-related financial risks (FINMA Circular 2016/1 as amended, and later rules), see the relevant legislation and FINMA publications. To be verified. ↩

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